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United States
Circuit Court of Appeals
For the Ninth Circuit.

THE UNITED STATES OF AMERICA,

Appellant,

No. 2209.

vs.

WILLIAM F. KETTENBACH, GEORGE H. KESTER,
CLARENCE W. ROBNETT, WILLIAM DWYER,
and FRANK W. KETTENBACH,

Appellees.

THE UNITED STATES OF AMERICA,

Appellant,

No. 2210.

vs.

WILLIAM F. KETTENBACH, GEORGE H. KESTER,
CLARENCE W. ROBNETT, WILLIAM DWYER,
THE IDAHO TRUST COMPANY, a Corporation,
THE LEWISTON NATIONAL BANK, a Corpora-
tion, THE CLEARWATER TIMBER COMPANY,
a Corporation, ELIZABETH W. THATCHER,
CURTIS THATCHER, ELIZABETH WHITE,
EDNA P. KESTER, ELIZABETH KETTEN-
BACH, MARTHA E. HALLETT, and KITTY
E. DWYER,

Appellees.

THE UNITED STATES OF AMERICA,

Appellant,

No. 2211.

vs.

WILLIAM F. KETTENBACH, GEORGE H. KESTER,
and WILLIAM DWYER,

Appellees.

Transcript of Record.

VOLUME III.

(Pages 801 to 1200 Inclusive.)

Appeals from the District Court of the United States for the
District of Idaho, Central Division.

Records of U. S. Circuit Court
appeals 786

Nos. 2209, 2210 AND 2211.

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Circuit Court of Appeals
For the Ninth Circuit.

THE UNITED STATES OF AMERICA,

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(Testimony of Frank J. Bonney.)

Q. Have you talked this matter over with anybody since you were at the Grand Jury last winter?

A. There has been a little joshing and roasting is all.

Q. Who have been joshing and roasting you?

A. All the fellows have been calling me a brother of Kettenbach in crime, and so on, and so forth.

Q. Have you repeated your testimony to anybody?

A. Not that I know of.

Q. Has anybody asked you to? A. No, sir.

Q. Do you remember this question being asked you last winter, when you were before the Grand Jury: "And who paid your expenses from your home to the Land Office when you made your original entry?"

"Answer. I believe Mr. Steffey gave me \$20.00."

A. Well, I might have. I couldn't say that he didn't.

Q. Did Steffey come down on the train with you?
[707—377] A. To-day?

Q. No—I mean the day that you filed on your claim? A. No, sir, I don't think so.

Q. Did you meet him here that day? A. No, sir.

Q. Who prepared your original papers?

A. I don't remember whether it was a man by the name of Williams; some—

Q. Well, how did you happen to go there? Did you ever have that man do any business for you before? A. I believe he fixed my other papers out.

Q. Did you pay him anything for it?

A. I think he charged me a dollar.

Q. And you went to the land office with that, did

(Testimony of Frank J. Bonney.)

you? A. Yes, sir.

Q. Do you remember this question being asked you, referring to Mr. Steffey: "And he was to pay your expenses going up to the land office, as I understand it?" "Answer. He never said anything about it." "Question. How did he happen to give you the \$20.00?" "Answer. Well, he just handed it to me and said, 'This is to pay your expenses.' "

A. Did I say that?

Q. I am asking you, do you remember saying that?

A. No, sir, I don't remember saying just those words.

Q. Well, do you remember Steffey giving you \$20.00 before you started down here?

A. It seems to me that Mr. Steffey gave me some money.

Q. What did he give you any money for?

A. Well, I don't know. I suppose he thought I was short, maybe, or didn't have any money there with me. I couldn't say.

Q. Was Mr. Steffey under any obligations to give you money?

A. Well, Steffey and I have been very friendly, have taken a [708—378] drink occasionally, and I could go to Steffey and always get money if I wanted it for a few days, if I needed it. I always brought my money right to home.

Q. Did anybody notify you when you were to make your final proof?

A. I believe the land office did. I couldn't say.

(Testimony of Frank J. Bonney.)

Q. And did you see Mr. Steffey between the time that you made your sworn statement and your final proof? A. I believe I did.

Q. Well, was anything said about where you were to get the money to make your proof?

A. No, sir, I don't think so.

Q. And did Steffey come down with you when you were to make your final proof? A. No, sir.

Q. Did you meet him down here?

A. I believe I met him down here.

Q. Did you meet him by appointment?

A. No, sir.

Q. Just ran across him, did you?

A. Yes, sir.

Q. And what happened then? What was said between you and Steffey then?

A. I don't remember, but I believe— I don't remember. I believe Steffey gave me some money then.

Q. Well, let me ask you: Where did you meet Mr. Steffey?

A. I think I met him just as I came down out of the building there—the land office.

Q. Did you meet him at the Lewiston National Bank? A. No, sir, I don't think I did.

Q. Did you go into the Lewiston National Bank with him?

A. Not that I know of. Not that I remember of.
[709—379]

Q. Was the Lewiston National Bank and the land office in the same building then?

A. I don't think so.

(Testimony of Frank J. Bonney.)

Q. What?

A. I don't remember. No; I believe the land office at that time was where it is now, if I remember right.

Q. And you met him out in front of there?

A. I met him right there by the land office.

Q. And were you expecting to see Mr. Steffey?

A. No, sir.

Q. And you just ran across him accidentally?

A. Yes, sir.

Q. Just a casual meeting? A. Yes, sir.

Q. Who were your final proof witnesses?

Mr. TANNAHILL.—We object to that. The record shows who his final proof witnesses were. If he is asking him regarding the record he should show him the record.

The SPECIAL EXAMINER.—Answer the question.

WITNESS.—Why, Mr. Gaffney and Mr. Erwin, I believe.

Mr. GORDON.—Q. Anyone else?

A. No, sir. I believe you only had to have two.

Q. Now, what did Steffey say to you when you met him there that day?

A. I don't know. I don't remember just now.

Q. Did he give you any money? A. Yes.

Q. How much?

A. Well, I don't know. I believe—I couldn't say—it must have been three or four hundred dollars.

Q. Wasn't it \$400.00? [710—380]

(Testimony of Frank J. Bonney.)

A. I couldn't say. It was whatever—nearly enough to prove up on the claim, I think.

Q. Wasn't it just enough to prove up on the claim? A. I don't know. I couldn't say.

Q. And did he say anything to you when he gave it to you?

A. Well, he said, "You will probably need a little money." I think that's what he said.

Q. What's that?

A. I believe that's what he said. It has been quite a while ago, and I don't remember all about it.

Q. And did you take that money which he gave you and go back in the land office and make your proof?

A. Let's see: I went down the street some place, and then went back up in the land office.

Q. Well, did you make your proof?

A. Yes, sir.

Q. And did you give them that money that Steffey gave you?

A. Well, sir, I had nearly enough money, and I used a little of that.

Q. You used a little of what?

A. Of the money that he handed me.

Q. How much of the money he handed you?

A. I don't know how much—of, probably \$50.00.

Q. And what did you do with the rest of it?

A. Why, I hung on to it.

Q. You kept it? A. Yes, sir.

Q. Didn't Steffey give you that money to make final proof?

(Testimony of Frank J. Bonney.)

A. Well, I suppose that's what he intended to do.

Q. And didn't you make the final proof with part of that money?

A. No, sir, not all of it. I had nearly enough money to make it myself. [711—381]

Q. Well, why did you take Steffey's money?

A. Well, just like everybody else; they was taking all they could get a hold of.

Q. Did you see Steffey again that day?

A. No, sir, I don't believe I did.

Q. What's that?

A. I don't believe I did.

Q. How did you expect to make proof that day if you hadn't met Steffey?

A. Well, I thought maybe I could raise a little money down here.

Q. Mr. Bonney, didn't Mr. Steffey tell you that if you would take up a timber claim he would pay all the expenses of it and give you the money to make final proof?

Mr. TANNAHILL.—We object to that as endeavoring to get the witness to say something that is not true. This is his own witness, and because Steffey says something of that kind exists is no reason why he should say the same thing.

Mr. GORDON.—I will ask the same question again: Didn't Steffey tell you that if you would take up a timber claim that Steffey would pay all the expenses, if you would convey it to him or whoever he told you to, and he would give you \$200.00 for it?

(Testimony of Frank J. Bonney.)

Mr. TANNAHILL.—We repeat the objection.

The SPECIAL EXAMINER.—Answer the question.

WITNESS.—Why, Mr. Steffey never told me that.

Mr. GORDON.—Answer the question yes or no.

A. No, sir.

Q. What did Steffey tell you?

A. He told me if I wanted to take a claim that he would guarantee me or he was positive that he could sell it so I could make \$200.00.

Q. You were not paying him anything for it, were you? A. No, sir.

Q. And why was he guaranteeing you that you could sell it? [712—382]

A. I don't know.

Q. Did he give you your \$200.00? A. Yes, sir.

Q. When did he give you that?

A. Well, I don't know. It was a month or two—whenever I sold it.

Q. Did you give him a note for the \$400.00, or the near \$400.00 that he loaned you? A. No, sir.

Q. Did you pay him any interest for it?

A. No, sir.

Q. Did you tell him when he gave it to you when you would repay him? A. No, sir.

Q. Was anything said about the \$400.00 when you got the other \$200.00? A. Yes, sir.

Q. What was said?

A. I think he counted that out, and gave me the balance.

Q. What do you mean—that he came to you and

(Testimony of Frank J. Bonney.)

had \$600.00 and counted \$400.00 out, and then gave you \$200.00 of it?

A. In figuring, he counted it out.

Q. And as a matter of fact the whole transaction turned out as you expected it would when you had your first talk with Steffey; is that correct?

A. I got my \$200.00.

Q. Well, isn't that what you understood you were to get when you had your first talk with him?

A. Yes, sir.

Q. In fact, he guaranteed that to you, didn't he?

A. Yes, sir.

Q. Do you remember this question being asked you when you were [713—383] at Moscow in November last: "Now, about this \$400.00 that he (Steffey) gave you, when did you give that back to him?" "Answer. I didn't give that back to him. I applied that on the sale of the land. I just hung on to it." Do you remember making that answer?

A. No, sir, I don't believe I did.

Q. Will you say that you didn't make that answer?

A. No; I may have said it. I may not have understood it.

Q. Is there anything incomprehensible about this question? I will repeat it again: "Now, about this \$400.00 that he gave you, when did you give that back to him?" Is there anything you can't understand about that?

A. I don't think I gave that back to him.

Q. Now, wait a minute. I say, is there anything

(Testimony of Frank J. Bonney.)

you can't understand about that question? You understand that, don't you? A. Yes, sir.

Q. "Answer. I didn't give that back to him. I applied that on the sale of the land." I ask you if that question was asked you, and did you make that answer?

A. Well, I don't know. I may have misunderstood that. Of course, that was intended as expenses. That is, it would be—I was to have \$200.00 above expenses.

The SPECIAL EXAMINER.—He asks you if you made that answer.

WITNESS.—Well, I don't remember.

Mr. GORDON.—[714—384] Q. This \$400.00 that Steffey gave you, did you think that was a present?

A. Well, I just supposed,—he said that he would guarantee me that I would make \$200.00 above expenses, and I supposed that maybe that might have gone in as expenses.

Q. Then, you didn't think that it was just a mere present?

A. Well, I supposed it was for the expenses, I supposed.

Q. What is that?

A. I supposed that he intended for me to take it and to pay the expenses, probably.

Q. After Mr. Steffey had given you that \$20.00 and the \$400.00, or about \$400.00, you wouldn't have felt right about selling to anybody else, would you?

A. Well, it might have knocked him out of what money he expected to make for locating me.

(Testimony of Frank J. Bonney.)

Q. You wouldn't have thought it right to have sold it to anybody else, would you?

A. Well, it probably wouldn't have been right.

Q. You felt that you were obligated to sell that to Mr. Steffey, didn't you?

A. Well, as long as he made the proposition that he thought he could sell it for me and had showed me the claim—

Q. And had put up the money?

A. And had let me have the money—

Q. Mr. Bonney, I show you timber and stone land sworn statement, dated June 27, 1906, signed Frank J. Bonney, and ask you whether or not you signed that paper and filed it in the land office on the date it bears. A. I suppose I did.

Q. Don't you know that you did.

(No answer.)

The SPECIAL EXAMINER.—That is your signature there, isn't it, Mr. Bonney? [715—385]

A. Yes, sir.

Mr. GORDON.—Q. I show you nonmineral affidavit, signed Frank J. Bonney dated June 27, 1906. Is that your signature to that?

A. Yes.

Q. I show you the testimony of Frank J. Bonney, taken on final proof, dated October 11, 1906, and ask you if that is your signature to that paper.

A. I think it is.

Q. I show you the cross-examination signed by Frank J. Bonney at final proof, and ask you if that is your signature. A. Yes, sir.

(Testimony of Frank J. Bonney.)

Q. Do you know to whom you deeded this property?

A. I don't remember, but I believe it was George L. Lester, or somebody,—I don't remember.

Q. Was it Mr. George H. Kester?

A. I don't think it was, no, sir; I don't remember. I don't think it was.

Q. Who brought the deed for you to sign?

A. Mr. Steffey.

Q. Was anybody with him? A. Yes, sir.

Q. Who? A. Mr. Todd, I think.

Q. Anybody else? A. No, sir; I don't think so.

Q. Did your wife take up a timber claim?

A. No, sir.

Mr. GORDON.—We offer in evidence timber and stone land sworn statement of Frank J. Bonney, dated June 27, 1906, the nonmineral affidavit, the notice of publication, the testimony given on final proof, and the cross-examination of Frank J. Bonney, all of which have [716—386] been identified by the witness, the testimony of the witnesses on final proof, the receiver's receipt and the register's certificate, dated October 11, 1906, certified copy of the patent issued to Frank J. Bonney, and dated September 13, 1907, all of said papers relating to the entry of the east half of the southeast quarter of section 33, and the northwest quarter of the southwest quarter of section 34, township 37 north of range 5 east, Boise meridian, and lot 1, in section 4, township 36 north of range 5 east, Boise meridian. We also offer in evidence certified copy of a deed

(Testimony of Frank J. Bonney.)

dated December 20, 1906, made by Frank J. Bonney and Ada Bonney, his wife, to George H. Kester, and W. F. Kettenbach, consideration \$950.00, conveying the east half of the southeast quarter of section 33, and the northwest quarter of the southwest quarter of section 34, township 37 north of range 5 east, and lot 1 of section 4, township 36 north of range 5 east, Boise meridian, containing 162.40 acres, and executed and acknowledged before William J. Todd, Notary Public of Nez Perce County, December 20, 1906, and recorded at the request of William Dwyer December 24, 1906.

Said above mentioned documents were thereupon marked by the reporter as Exhibits 19, 19A, 19B, 19C, 19D, 19E, 19F, 19G, 19H, 19I, 19J, 19K, 19L, 19M, 19N, 19O, 19P, and 19Q.

Mr. TANNAHILL.—The defendants object to all of the documents offered relating to the final proof, and especially the testimony of claimant Frank J. Bonney, the cross-examination of claimant Frank J. Bonney, the testimony of the witness for claimant Charles H. Irwin, the cross-examination of witness for claimant Charles H. Irwin, the testimony of John Gaffney, and the cross-examination of the witness John Gaffney, and all subsequent papers relating to the final proof, upon the ground that they are incompetent, irrelevant and immaterial, occurring long after the filing of the sworn statement. The defendants severally waive any further identification of the papers offered. [717—387]

(Testimony of Frank J. Bonney.)

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mr. Bonney, did you ever have any conversation with George H. Kester or William Dwyer or William F. Kettenbach regarding the sale of this land, before you made your final proof?

A. No, sir, I don't believe I did.

Q. As I understand you, you had no contract or agreement with anyone for the sale of the land, before you filed your sworn statement?

A. No, nothing in particular, no, sir.

Q. Or before you made your final proof?

A. No, sir.

Q. In the affidavit you made in connection with your sworn statement when you filed on your land, you say, "That I have made no other application under said acts; that I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit, and that I have not, directly or indirectly, made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself." That was true when you made it, was it?

A. When he asked me there what I wanted with this land at the land office there, he asked me what I was taking it for, and I told him it was for speculation; I think that is marked there, or that is what I told him; I told him I didn't want to keep it.

(Testimony of Frank J. Bonney.)

Q. But you made no contract to convey it to anybody? A. Nobody in particular, no, sir.

Q. The only arrangement you had was that which you stated with Steffey, and he told you he would sell it for you after you got your title?

A. Yes, sir.

Q. And that he was pretty sure you could make at least \$200.00 out of it, and maybe more?
[718—388]

A. Yes, sir, that is what he told me. Well, I did make more, I believe.

Q. About how much more did you make?

A. I don't remember, but it must have been maybe \$20.00 or \$25.00 more.

Q. You think you made about \$225.00 out of it over and above expenses?

A. Yes, sir, I made \$200.00 or a little better.

Q. I will ask you to look at this deed, Mr. Bonney, and state whether or not that is the deed you signed.

A. I don't believe it was; I think it was Lester, but I may have signed this, but I think it was,—I don't believe that was Kester and Kettenbach, but, of course, that is my writing there, and it must have been. I thought it was Lester.

Q. You was probably mistaken about that,—Kester and Lester. A. That is my writing, yes.

Q. I will ask you to look over that affidavit, and state if you remember the circumstance of your signing that.

A. Yes, I remember about this, but I didn't have time to read it. (Witness reads document.) This

(Testimony of Frank J. Bonney.)

here, "for the benefit or advantage, directly or indirectly of any person," why I supposed it would be a benefit to me.

Q. At whose request did you sign this affidavit?

A. Mr. Steffey's.

Q. That affidavit is true, is it not? A. Partly.

Q. Is there any part of it that isn't true, Mr. Bonney?

A. Why, the portion that it was taken with the intention of benefit from it there—

Q. Well, you was the one that was to benefit from it? A. Certainly.

Q. That is what it means, that it was not for the benefit of anyone else, that is what the affidavit says, that it is taken for your [719—389] own benefit, and not for the benefit of anyone else. Then, with that understanding of the affidavit the affidavit is true, is it not? A. I think so.

Mr. TANNAHILL.—I ask that this be marked Defendants' Exhibit "C," for identification.

The document was thereupon marked by the reporter as Defendants' Ex. "C," for identification.

Mr. TANNAHILL.—Q. Mr. Bonney, you would not have felt right to sell this land to anyone else without giving Mr. Steffey the preference right in purchasing it, would you?

A. Why, no, sir, I think he was entitled to make anything he could over what he had guaranteed me.

Q. And that is about all the obligation you felt under to Mr. Steffey, was to give him the preference right of buying it? A. Yes, sir.

(Testimony of Frank J. Bonney.)

Redirect Examination.

(By Mr. GORDON.)

Q. This affidavit that you have identified here, marked Defendants' Exhibit "C," for identification, did you ever read that affidavit before?

A. No, sir.

Q. All that you wanted when you signed that was your \$200.00, wasn't it?

A. I will tell you, Mr. Gordon: They jumped off the stage one morning and he hurriedly explained to me what that was, told me, and while the stage waited in front there, and had to hurry in and hurry back out again.

Q. What did he tell you he wanted it for?

A. Well, sir, I don't remember.

Q. Did he tell you who sent it up to him?

A. No. [720—390]

An adjournment was thereupon taken until ten o'clock to-morrow morning. [721—391]

The hearing was resumed at ten o'clock A. M., Saturday, August 27, 1910.

[Testimony of Clinton E. Perkins, for Complainant.]

CLINTON E. PERKINS, a witness called on behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. What is your name? A. C. E. Perkins.

Q. What does the C. stand for? A. Clinton.

Q. Where do you reside, Mr. Perkins?

(Testimony of Clinton E. Perkins.)

A. Fraser, Idaho.

Q. How long have you resided in Fraser?

A. Twenty-two years.

Q. Are you a married man? A. Yes.

Q. Is your wife dead? A. Yes, sir.

Q. Have you any family now? A. Yes, sir.

Q. Of what does it consist? A. Six children.

Q. How old is the youngest child?

A. Seventeen months old.

Q. How many children did you have in April,
1906? A. Five.

Q. What was your occupation in April, 1906?

A. Farming.

Q. How old were you then?

A. I was forty-three.

Q. Did you own a farm in 1906?

A. Yes, sir. [722—392]

Q. What was it? A homestead? A. Yes, sir.

Q. Had you patent to it at that time?

A. Yes, sir.

Q. Was it a quarter section? A. Yes, sir.

Q. What was it worth?

A. I suppose it was worth \$2,500.00 at that time.

Q. Do you still own it? A. Yes, sir.

Q. Was there a mortgage on it at that time?

A. I don't think so.

Q. Is there a mortgage on it now? A. Yes, sir.

Q. How much? A. \$750.00.

Q. When did you put the mortgage on it?

A. About a year ago.

Q. Do you remember taking up a claim under the

(Testimony of Clinton E. Perkins.)

timber and stone act in 1906? A. Yes, sir.

Mr. TANNAHILL.—The defendants severally object to any evidence in regard to taking up the timber claim, in so far as it relates to bills No. 406 and 388, upon the ground that it is irrelevant and immaterial, the entry of the witness not being involved in these two particular actions.

Mr. GORDON.—Q. Do you know any of the defendants in these actions that we are trying?

A. Yes, sir.

Q. Mr. William F. Kettenbach?

A. I don't know him.

Q. Mr. William Dwyer? [723—393]

A. Yes, sir.

Q. Mr. George H. Kester?

A. I have met the man, that is all; I am not acquainted with him.

Q. How long have you known Mr. Dwyer?

A. Possibly three years.

Q. Mr. Perkins, I show you timber and stone land sworn statement of Clinton E. Perkins, dated April 19, 1906, and ask you if that is your signature to that paper, and whether or not you filed that in the land office about the date it bears?

A. Yes, sir, that is my signature.

Q. And you filed the paper in the land office, didn't you? A. Yes, sir.

Q. I show you nonmineral affidavit, of the same date, and ask you if that is your signature?

A. Yes, sir.

Q. I show you the notice of publication of the

(Testimony of Clinton E. Perkins.)

same date. You filed that paper at the same time, did you? A. I think so.

Q. I show you the testimony of Clinton E. Perkins, given on final proof July 12, 1906, and ask you if that is your signature to that paper?

A. Yes, sir.

Q. I show you the cross-examination of Clinton E. Perkins taken at the same time, and ask you if that is your signature to that paper? A. Yes, sir.

Q. Do you know Mr. Harvey J. Steffey?

A. Yes, sir.

Q. Did you ever have any business relations with him? A. Yes, sir.

Q. In connection with this timber claim?

A. I did.

Q. Will you state how you happened to take up a timber claim? [724—394]

A. Why, he was in the locating business, and I asked him to find me a claim, and after while he did find me one.

Q. Did he come to your house the first time you spoke to him about it? A. No, sir.

Q. You met him? A. I met him, yes, sir.

Q. And when he told you he had found you a claim, did he come to your house to advise you of that matter? A. I believe he did; I am not sure.

Q. What did he say to you about the claim when he told you that he had one that he could locate you on?

A. Why, he told me that he had found me a claim.

Q. Well, was that all?

(Testimony of Clinton E. Perkins.)

A. Well, I came down here and filed on the claim.

Q. No, but some time before you filed you went to view the land, didn't you? A. Yes, sir.

Q. At the time that you were advised by Mr. Steffey that he had found you a claim was any arrangement made as to who was to furnish the expenses of the claim?

A. I didn't have the money at the time he found the claim, and he told me that he would pay the expenses and I could pay him back.

Q. Well, was he to furnish all expenses of taking up this claim and you were to pay him back later?

A. He said he would do it.

Q. Did he tell you whether or not it was a very good claim?

A. He told me it wasn't a good claim, not a very good one.

Q. Did he tell you what you could get out of it?

A. Why, he told me that he thought I could make a couple of hundred dollars over and above what it would cost.

Q. That was before you had even gone to look at the land? A. Yes. [725—395]

Q. Before you filed?

A. Yes. He told me that it wasn't a good claim, but he was satisfied he could sell it for me and I could make that much.

Q. Were you to pay Mr. Steffey anything for locating you? A. Yes, sir.

Q. How much?

A. I believe \$200.00. I am not sure about that.

(Testimony of Clinton E. Perkins.)

Q. And was he to loan you that money too?

A. Well, I don't know as he was to loan me that money.

Q. How far is this claim located from where you lived at that time?

A. About twenty miles, possibly.

Q. Did you and Mr. Steffey go over the claim?

A. Not at that time.

Q. When did you go over it?

A. I had been over it before. I went over it before he told me about it. I had been all over the land.

Q. You are not a timber cruiser, are you?

A. No, sir.

Q. Or a locator? A. No, sir.

Q. Do you mean you had been around in that vicinity or over this particular claim?

A. I had been on this land before a good many times.

Q. How do you know you had been on this particular land? A. How do I know I had been on it?

Q. Yes.

A. Because the old trail was right there.

Q. Is it right on the trail?

A. It is on the trail; the trail went through it.

Q. Do you know the township and range it is located in?

A. I don't now, that is, I don't remember the number.

Q. But you didn't think it necessary for you and Mr. Steffey to [726—396] go over it?

(Testimony of Clinton E. Perkins.)

A. He told me it wasn't necessary any more.

Q. Well, if you knew where this land was there and knew about the claim, why was it necessary for you to have anybody locate you?

A. Because I didn't know what was taken and what wasn't.

Q. Could they have advised you of that at the land office? A. I suppose they could; I don't know.

Q. Did you think it was worth \$200.00 for somebody to advise you that that claim hadn't been located on? A. It probably was.

Q. Didn't you know that you could have written a letter to the land office at Lewiston, and they would have told you whether or not that claim was located on, for the price of a two cent stamp?

A. I suppose I could.

Q. As I understood you to say, you didn't have the money to purchase this land. Did you have the money that you could spare to pay the expenses of locating? A. No, sir.

Q. And when you came to Lewiston to file your application to enter the tract of land, did you come alone or did someone come with you?

A. Mr. Steffey came.

Q. And he paid the carfare down here?

A. I believe he did.

Q. And all your expenses while you were here?

A. Most of them.

Q. Your actual expenses he paid while you were here, didn't he? A. Yes, sir.

Q. And your fare back to your home?

(Testimony of Clinton E. Perkins.)

A. Yes, sir.

Q. And this sworn statement that I have shown you, the first paper you filed in the land office, do you know who prepared that paper for you? [727—397]

A. I don't believe I do.

Q. Do you know whether Mr. Steffey attended to that matter for you and brought the paper to you or not?

A. No, sir, we went to some office.

Q. Do you know whose office it was?

A. I don't know; no, sir.

Q. Some lawyer's office?

A. I suppose it was; I don't know.

Q. You didn't pay any fee for having these papers prepared, did you?

A. I don't think I did.

Q. When you went to the land office there was a filing fee and a fee for publication. Is that correct?

A. Yes, sir.

Q. And Mr. Steffey paid that also?

A. Yes, sir.

Q. Now, tell exactly what Mr. Steffey informed you you would have to do to make that \$200.00.

A. Well, he told me that he was satisfied he could sell the land and I could get \$200.00 over and above expenses. He said he positively couldn't make any bargain with me, but as far as he was concerned he was a friend of mine and he was satisfied he could get me that much money.

Q. Did he tell you why he couldn't make any bargain with you?

A. I don't know as he told me why.

Q. Did he tell you just to rest easy in the matter

(Testimony of Clinton E. Perkins.)

and you would get rid of the land?

A. He told me he was satisfied he could sell it.

Q. And that was before you located?

A. Yes, sir.

Q. Did he bargain with you to give you that \$200.00? A. No, sir.

Q. You are sure? [728—398]

A. Why, I know he didn't.

Q. Do you remember testifying before the grand jury last November? A. Yes, sir.

Q. Do you remember whether or not I asked you this question: "Did he, Steffey, bargain with you as to the \$200.00? Answer. Well, he gave me to understand that I was to get that much."

A. Well, he told me he was satisfied he could sell it and get me \$200.00, but he made no bargain with me to get it.

Q. Who did you understand you were selling it to?

A. I never knew.

Q. Did you feel that you were in duty bound to sell it to Mr. Steffey?

A. Why, in one way I did and in one way I don't know that I did. I depended on Mr. Steffey.

Q. Have you talked this matter over with anybody since you were at the grand jury?

A. Well, I may have when I was to home. I don't know.

Q. Have you talked about it with anybody since you have been here?

A. Not in particular; no, sir.

Q. Well, anybody in general?

(Testimony of Clinton E. Perkins.)

A. Nobody in general.

Q. Have you spoken to anybody about it since you have been here?

A. Well, now, I may have. I don't know. I have talked with the boys that has been waiting here and I don't know. I may have spoke about it.

Q. Do you remember me asking you this question: "Was it your understanding that you were to sell it to whomsoever he, Steffey, picked out for you?" And that you made this reply: "Well, I felt that I was in duty bound to sell it to him." Answer the question yes or no.

Mr. TANNAHILL.—He can make any explanation he wants to.

Mr. GORDON.—After he answers it he can.
[729—399]

A. I don't remember. You say that is the question I answered last winter?

Q. I am reading from the stenographic report, and I am asking you if you remember that question being asked you and that answer made by you?

A. I am not sure.

Q. Is that the truth?

A. Read it again, please.

Thereupon the reporter read the question to him, as follows: "Do you remember me asking you this question: 'Was it your understanding that you were to sell it to whomsoever he, Steffey, picked out for you?' And that you made this reply. 'Well, I felt that I was in duty bound to sell it to him.' Answer the question yes or no."

(Testimony of Clinton E. Perkins.)

A. No, I don't remember.

Q. You say you don't remember. Now, is that a fact, what I read to you, is that the truth of the matter? A. That I depended on Steffey?

Q. That isn't the question. Can't you remember a question long enough to answer it? Did you say, "Well, I felt that I was in duty bound to sell it to him"?

A. Well, yes, I did feel a little in duty bound to sell it to him if he wanted it.

Q. Do you remember the occasion of making your final proof? A. Yes, sir.

Q. Did anyone come from your home to Lewiston with you on that occasion? A. I don't think so.

Q. Who notified you of the time to come?

A. It was advertised in the paper.

Q. Well, I know that, but—

A. I don't think anybody notified me.

Q. Do you read all advertisements in the paper?

A. Well, I read that one. [730—400]

Q. Didn't the land office notify you?

A. I don't remember as they did.

Q. Did Mr. Steffey notify you?

A. I don't think so.

Q. You met Steffey when you got here though, didn't you? A. Yes, sir.

Q. Did you meet him by appointment?

A. I suppose I did. I don't remember.

Q. Did you get the money from him with which to make your proof? A. No, sir.

Q. Didn't you get any from him?

(Testimony of Clinton E. Perkins.)

A. Not to make my proof with, I didn't.

Q. Did you get any money from Steffey that day?

A. Yes, sir.

Q. How much did you get?

A. I don't remember.

Q. Didn't you get \$400.00?

A. Might have, yes, sir.

Q. Don't you know as a fact that you did?

A. Yes, sir.

Q. Where was that given to you?

A. It was given to me at a hotel, but I can't tell you the name of it.

Q. Did he go to the land office with you when you made your proof?

A. I believe he was one of my witnesses. I don't know that he went with me.

Q. Did I ask you if you used the money Steffey gave you to make your proof? A. No, sir.

Q. He gave you the money before you made your proof though, as I understand?

A. Yes, sir. [731—401]

Q. And he gave you \$400.00?

A. I believe it was \$400.00.

Q. Why didn't you make your proof with that money?

A. Because I was— I had been told that it wasn't just right, and I raised the \$400.00 myself.

Q. How did you raise the \$400.00?

A. Well, sir, I sold some timber for one thing, and some cattle for another.

Q. The day you were in Lewiston?

(Testimony of Clinton E. Perkins.)

A. No, sir; before that.

Q. When did you sell your timber?

A. I sold my timber I think probably in May or June.

Q. How long was that before you made your proof? A. Two or three weeks.

Q. To whom did you sell the timber?

A. John Peckham.

Q. How much did you get for it?

A. I got \$250.00.

Q. Cash? A. Yes, sir.

Q. What else did you sell?

A. I sold some cattle.

Q. How much did you get for the cattle.

A. I don't remember, but I got enough so that I had more than \$400.00.

Q. What did Steffey give you that money for?

A. He give it to me to prove up with.

Q. And you had the money with you when you went to the land office. Is that correct?

A. Yes, sir.

Q. And you had Steffey's money in one pocket and your own money in the other?

A. Yes, sir. [732—402]

Q. And you thought it was proper to use the money you had in the other pocket? A. Yes, sir.

Q. Did you give Steffey his money back?

A. No, sir.

Q. Did you give him a note for it?

A. No, sir.

Q. Pay him any interest on it? A. No, sir.

(Testimony of Clinton E. Perkins.)

The SPECIAL EXAMINER.—If you had any money of your own why did you take Mr. Steffey's money?

WITNESS.—Because part of that money I owed and I couldn't afford to have it tied up.

Mr. GORDON.—Q. You didn't intend to use that money of yours to make proof, did you?

A. My own money?

Q. Yes, sir. A. I certainly did.

Q. If Steffey hadn't given you the \$400.00 would you have made proof that day?

A. I don't know whether I would or not.

Q. I understood you to say just now that you needed it for some other purpose and couldn't spare it. A. Yes, sir.

Q. Then, as a matter of fact if you hadn't gotten that \$400.00 from Steffey you would have thrown the thing up, wouldn't you?

A. I don't know. I might have.

Q. Did you collect the money that you had of your own the day you made proof after you got here?

A. No, sir.

Q. Let us see if this will refresh your recollection: "When I went down there he, Steffey, asked me if I had the money to prove up [733—403] on, and I told him I had some money, and he gave me the price, \$400.00 and some dollars, but I didn't use this that he gave me. I could have used this, but I rustled around and got the money of my own."

A. I rustled around before I came to Lewiston.

Q. Do you remember making that answer?

(Testimony of Clinton E. Perkins.)

A. I don't remember making that answer.

Q. Is that answer true or false?

A. I suppose it is true.

Q. Do you remember this question being asked you: "And you got the other money so that you could ease your conscience? Answer. Well, they asked me whose money I was proving up with, and I was proving up with my own money. That was the only difference. By the time it came to proving up there was a lot of yarns going around, and they said, 'you will get into trouble if you borrow the money.' "

A. Yes, sir.

Q. And was that the reason you rustled this other money? A. Yes, sir.

Q. Now, after you made proof on the proving up day did Steffey give you any money?

A. Yes, sir.

Q. How much?

A. I believe he gave me \$100.00.

Q. Did he ever give you any after that?

A. Yes, after that.

Q. Did you give him a deed the day he gave you the \$100.00? A. No, sir.

Q. What did he give you the \$100.00 for?

A. Because I needed the money, I guess.

Q. Because you needed the money. Then you still had \$500.00 and some odd dollars, did you?

A. Yes, sir. [734—404]

Q. You wouldn't have felt honorable in selling that land to anybody else but Steffey, would you?

A. Why, I could have if I wanted to.

(Testimony of Clinton E. Perkins.)

Q. You mean somebody might have bought it from you and you wouldn't have been criminally liable, but that isn't the question. I say you wouldn't have felt honorable in selling to anybody you wanted to?

A. I could have sold it to anybody I wanted to by giving Steffey his money.

Thereupon, by request, the reporter repeated the last question.

WITNESS.—Why, I wouldn't have, no.

Mr. GORDON.—Q. I will ask you whether or not you didn't feel, from your first conversation with Steffey, in consideration of the money he was going to advance to you, that you would sell him that property?

A. Why, I did, because I depended on him.

Q. And you wouldn't have taken it up if you hadn't? A. I wouldn't at that time.

Q. To whom did you sell this property?

A. I believe it was Mr. Kettenbach.

Q. You sold through Mr. Steffey?

A. Yes, sir.

Q. State how that transaction happened. Did Mr. Steffey come out to your place with a deed?

A. No, sir, I believe I went to Mr. Judd's office, justice of the peace or notary public, and made out the deed.

Q. Who was there at that time?

A. Mr. Judd was there.

Q. Well, who else? A. My wife.

Q. Who else?

A. I don't know whether Mr. Steffey was there

(Testimony of Clinton E. Perkins.)

or not. [735—405]

Q. Did you ever meet Mr. Dwyer in this transaction?

A. No, sir, never knew the man at that time.

Q. When did you get the rest of your \$200.00?

A. Well, it was some little time after the deed was made out. I don't remember just how long.

Q. Who gave you that? A. Steffey.

Q. So the whole matter turned out just as you expected it would from the start? A. Yes, sir.

Q. You got what Steffey told you you would get?

A. Yes, sir.

Q. You had no complaint whatever, did you?

A. Not a bit.

Q. You felt that he had carried out his obligation and you had carried out yours? A. Yes, sir.

Mr. GORDON.—We offer in evidence timber and stone land sworn statement of Clinton E. Perkins, dated April 19, 1906, the nonmineral affidavit, the notice for publication, the testimony of Perkins given on final proof, and the cross-examination thereof, all of which have been identified by the witness; the testimony of the witnesses on final proof, and the cross-examination of them; the receiver's receipt and the register's certificate, dated July 12, 1906; certified copy of patent issued to Clinton E. Perkins, September 11, 1907, all relating to the entry of lots 3 and 4, of section 3, township 36 north of range 5 east, and the south half of the southwest quarter of section 34, in township No. 37, north of range 5 east of Boise

(Testimony of Clinton E. Perkins.)

meridian. We also offer certified copy of deed dated September 4, 1906, made by Clinton E. Perkins and Rhoda A. Perkins, his wife, to George H. Kester, consideration \$1250.00, conveying lots 3 and 4, of section 3, township 36 north of range 5 east, and the south half of the southwest quarter of [736—406] section 34, in township 37 north of range 5 east of Boise meridian, containing 165.12 acres, signed and executed by Clinton E. Perkins and Rhoda A. Perkins, his wife, before Fred A. Judd, Justice of the Peace of Nez Perce County, September 4, 1906, and recorded in the office of the recorder of Nez Perce County, at the request of the Lewiston National Bank September 10, 1906.

Said above mentioned documents were thereupon marked by the stenographer as Exhibits 20, 20A, 20B, 20C, 20D, 20E, 20F, 20G, 20H, 20I, 20J, 20K, 20L, 20M, 20N, and 20O.

Mr. GORDON.—Q. I asked you whether or not you ever gave that \$400.00 back to Mr. Steffey?

A. No, sir.

Mr. TANNAHILL.—The defendants severally waive any further identification of the papers, but severally object to the introduction of any of the papers in evidence in so far as they relate to bills No. 406 and 388, upon the ground that they are irrelevant and immaterial, the entry not being involved in either of these actions. And the defendants severally object to the introduction of the final proof papers in evidence in so far as they relate to either of the ac-

(Testimony of Clinton E. Perkins.)

tions, referred to as the testimony of claimant Clinton E. Perkins, the cross-examination of the claimant Clinton E. Perkins, the testimony of the witness for claimant Harvey J. Steffey, and the cross-examination of the witness for claimant Harvey J. Steffey, the testimony of the witness William Dwyer and the cross-examination of the witness William Dwyer, the proof of publication, upon the ground that they are matters relating to the final proof, occurring long after the filing of the sworn statement, and are irrelevant and immaterial.

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mr. Perkins, as I understand you, your first conversation with Mr. Steffey was that you asked him if he could locate you on a timber claim? [737—407]

A. Yes, sir.

Q. You told him you wanted to take up a timber claim? A. Yes, sir.

Q. Then, later he told you he could locate you on a timber claim? A. Yes, sir.

Q. Then, was there some conversation about the value of it? What it was worth? He told you it wasn't worth—

A. He said it wasn't a good claim.

Q. And he told you that he thought he could sell it for you so that it would bring you at least \$200.00 over and above expenses? A. Yes, sir.

Q. And did he tell you in that same conversation that he could make no contract with you to purchase

(Testimony of Clinton E. Perkins.)

it or to sell it? A. Yes, sir, he did.

Q. And it was your understanding that you was making no contract with him regarding the sale of your land?

A. That was what I understood.

Q. Before you made your final proof?

A. Yes, sir.

Q. And as a matter of fact you made no contract for the sale of your land— A. None whatever.

Q. —until after you made final proof?

A. No, sir.

Q. Then, the affidavit which you made at the time you filed your sworn statement, "That I have made no other application under said acts; that I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit, and that I have not, directly or indirectly, made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit [738—408] of any person except myself," that affidavit was true, was it? A. Yes, sir.

Q. True at the time you made it, and at the time you made final proof, and is still true?

A. Yes, sir.

Q. And you paid for the land with your own money? A. I did.

Q. And your transaction in regard to it was per-

(Testimony of Clinton E. Perkins.)

fectly proper in so far as you know? A. Yes, sir.

Q. Do you remember how long it was after you made your final proof that you made a deed to the land?

A. I don't remember just how long. It was, I believe, the same fall. I proved up in the summer and I think it was the same fall.

Q. About the 4th of September, 1906?

A. I suppose.

Q. Does that deed refresh your memory (handing witness deed)? Your signature is on the other side of it, at the bottom. A. Yes, sir.

Q. And that is when you sold your land?

A. Yes, sir.

Q. Do you remember the circumstance of your signing an affidavit in relation to the land? Just look over that paper (handing witness paper). Do you remember the circumstance of your signing that?

A. Yes, sir.

Q. What were the circumstances under which you signed it? A. Oh! Do I remember?

Q. The circumstances of your signing or making that affidavit?

A. No, I don't just remember when I did it either.

Q. Who brought the affidavit to you?

A. I believe Colonel Todd, but I don't know; I couldn't say for sure. [739—409]

Q. Do you know whether Steffey was there or not?

A. No, sir, I don't.

Q. Do you remember whether Steffey was there or

(Testimony of Clinton E. Perkins.)

not? A. No, I don't remember.

Q. That affidavit is true, is it? A. Yes, sir.

Q. That is your signature to it, is it?

A. Yes, sir.

Mr. TANNAHILL.—We ask that it be marked Defendants' Exhibit "D," for identification.

Said document was thereupon marked by the stenographer as Defendants' Ex. "D," for identification.

Mr. TANNAHILL.—Q. Mr. Perkins, you say that the arrangement you had with Mr. Steffey turned out as you expected it would. You mean that Mr. Steffey told you that he thought he could sell the land for enough so that you could clear at least \$200.00?

A. Yes, sir.

Q. And that after you acquired title you could sell it in that way? A. Yes, sir.

Q. That was the arrangement you had reference to? A. Yes, sir.

Q. And there wasn't any arrangement that you might have had with Mr. Steffey to buy your land before you made final proof? A. None whatever.

Q. And you stated that you felt under some obligation to sell it to Mr. Steffey as well as anyone else, all things being equal. You mean by that you felt under obligation to give Mr. Steffey the preference right? A. Yes, sir.

Q. You did not feel under any obligation by reason of any contract you had made with Mr. Steffey before you purchased it, did you? [740—410]

A. No, sir.

(Testimony of Clinton E. Perkins.)

Q. And you understood that you had no contract with him for the purchase of it?

A. I had no contract with him.

Redirect Examination.

(By Mr. GORDON.)

Q. Mr. Perkins, there was no further conversation between you and Mr. Steffey about what you were to do with this land, between the first time that you talked with him about it and the time you signed this deed, was there?

A. Was there any talk about it?

Q. Yes. About the sale of it, I say.

A. Why, a little; I guess there was.

Q. Do you remember when it was?

A. No, I don't.

Q. Do you remember what transpired when you signed this deed? Was the deed just brought to you and you signed it?

A. No, sir, we went to Mr. Judd's.

Q. Was anything said about price at that time, or did he just give you \$100.00?

A. He didn't give me the \$100.00 then.

Q. Was anything said about price then?

A. I don't remember.

Q. Would you have remembered if there hadn't been anything said? A. I don't know.

Q. What was said when this affidavit was brought to you by Mr. Judd?

A. Did Mr. Judd bring the affidavit?

Q. I understood you to say he did, sir. I am

(Testimony of Clinton E. Perkins.)

speaking now of the paper marked Exhibit "D."

A. I think Mr. Todd— [741—411]

Q. Todd—excuse me.

A. I don't remember what was said.

Q. Was the paper prepared when he brought it?

A. I don't know.

Q. You haven't any recollection of it at all, have you?

A. I have a recollection of signing it, but as to whether he made it out there or not—

Q. Did you read it over?

A. Yes, sir, I suppose I did.

Q. Was it in your house?

A. I believe it was.

Q. Was it in your house or were you and your wife down at somebody else's house?

A. I ain't sure, but I think it was at my house.

Q. You haven't a typewriter there, have you?

A. No, sir.

Q. Then, it must have been drawn up before he brought it. A. I don't know.

Q. He didn't bring a typewriter with him, did he?

A. I don't—

Q. Who did bring a typewriter? Did he bring a typewriter?

A. I don't know. It may have been Mr. Smith, this man here—I don't mean right here now, but—

Q. You mean one of the special agents of the Government? A. Yes, sir.

Q. Now, how long after you made and delivered this deed did you make this affidavit?

(Testimony of Clinton E. Perkins.)

A. I don't know.

Q. Have you any recollection?

A. No, sir, I don't know just how long it was.

Q. Well, was it a week or a month or six months, or how long?

A. It might have been a month; I don't know.

Q. I notice that the deed is dated September 4, 1906, and the [742—412] affidavit is dated February 28, 1907.

A. Well, it might have been that long; I don't know.

Q. Was anything said why they wanted this affidavit? A. I don't think so.

Q. Did Mr. Todd tell you who had sent it to him?

A. No, sir, or if he did I don't remember.

Recross-examination.

(By Mr. TANNAHILL.)

Q. You spoke about Mr. Smith being at your place with a typewriter. Was it Special Agent Smith, in the employ of the Department?

A. I think so. I am not sure whether he is the man or not.

Q. I will ask you if Mr. Steffey came to your house about the time Mr. Smith came afterwards and asked you to repudiate your affidavit and testify that you had a prior agreement?

A. Why, he came there after that and asked me a few questions on that line.

Q. What did he ask you? What did he tell you?

A. He asked me if I would come down to Lewiston

(Testimony of Clinton E. Perkins.)

and go on the stand.

Q. And what else did he ask you?

A. He asked me to see Mr. Jolly, as he hadn't time. And I rode back down the road with him and he told me then why he wanted this done.

Q. What did he tell you was the reason?

A. Well, he said they had given him dirt and he was going to get even with them.

Q. Who did you understand he meant by they?

A. Kester and Kettenbach, he gave me to understand.

Q. Kester, Kettenbach and Dwyer?

A. Yes, sir.

Q. Was there anything else he said to you?

A. Well, he said that that claim would look pretty good to get it back. [743—413]

Q. Look pretty good for you to get it back?

A. Yes.

Q. Do you think of anything else he said?

A. Nothing in particular.

Redirect Examination.

(By Mr. GORDON.)

Q. Did you talk with Mr. Steffey about the way this claim was taken up?

A. No, not how the claim was taken up.

Q. Did Mr. Steffey tell you that he wanted you to tell how the transaction happened?

A. Yes, sir.

Q. Did he tell you he wanted you to tell the truth about it?

(Testimony of Clinton E. Perkins.)

A. He didn't say anything about me telling the truth.

Q. Did he want you not to tell the truth about it?

A. Well, he didn't come right out and say he didn't.

Q. Did he do anything to indicate to you that he wanted you to tell anything but the truth?

A. He didn't say one way or the other.

Q. Have you ever told anybody about this before?

A. Why, I may have. I have talked it over a good many times among my friends.

Q. Did you ever tell Mr. Tannahill?

A. I don't think I told Mr. Tannahill.

Q. Have you ever talked to Mr. Tannahill before about this case? A. Why, I may have, a little.

Q. When? A. Last winter.

Q. Where?

A. Down at Boise. I haven't talked with him in Lewiston about it.

Q. Did you tell him that then? [744—414]

A. I don't think I did.

Q. Did you talk to Mr. Dwyer?

A. I have, yes, sir.

Q. When? A. Last winter, and perhaps since.

Q. When was the last time you talked to Mr. Dwyer? A. About the case?

Q. Yes. A. Well, I don't know when.

Q. Did you talk to him yesterday?

A. I don't think I did yesterday.

Q. Did you talk to him about anything yesterday?

A. Oh, yes, I talked to him yesterday.

(Testimony of Clinton E. Perkins.)

Q. Did you see Mr. Dwyer when you were summoned before the grand jury last winter at Moscow?

A. Yes, sir.

Q. You talked with him? A. Yes, sir.

Q. Did he tell you that he had this affidavit that has been shown you this morning? A. No, sir.

Q. What did he tell you?

A. I don't know now what he told me. I don't know that we talked the case over at all.

Q. Nothing said about the case?

A. Not to speak of, that I know of. If there was, I have forgotten it.

Q. And you told Mr. Tannahill the same story you have told here this morning when you had your talk with him?

A. Not very much of it, if any, for he has never asked me but very little about it.

Q. Did you tell him about Steffey coming out to your house with Mr. Smith? [745—415]

A. I don't think I did.

Q. Did you tell anybody that?

A. Why, I suppose I have.

Q. Who did you tell it to?

A. I don't know. I have talked it over with a good many of the people that have been waiting around, waiting just as I have been; we have talked these things over more or less, but who I don't know.

Recross-examination.

(By Mr. TANNAHILL.)

Q. You was called to Boise last winter as a witness in the trial of the defendants by the defendants,

(Testimony of Clinton E. Perkins.)

were you not? A. Yes, sir.

Q. That is how you came to be in Boise?

A. Yes, sir.

Q. And the conversation you had with me in Boise was when you was a witness for the defendants, whom I was representing? A. Yes, sir.

Mr. TANNAHILL.—That is all.

Mr. GORDON.—That is all.

At this time an adjournment was taken until ten o'clock A. M., Monday, August 29, 1910. [746—416]

On Monday, the 29th day of August, 1910, at ten o'clock A. M., the hearing was resumed.

[Testimony of Mrs. Frances A. Clausen, for Complainant.]

Mrs. FRANCES A. CLAUSEN, a witness called on behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. Will you state your name, please?

A. Frances A. Clausen.

The SPECIAL EXAMINER.—Q. Frances A. Clausen? A. Yes, sir.

Q. How do you spell your name?

A. C-l-a-u-s-e-n.

Mr. GORDON.—You are a married woman, are you? A. Yes, sir.

Q. How long have you been married, Mrs. Clausen, to your present husband?

A. A year ago the first of February last. A year ago last February.

(Testimony of Mrs. Frances A. Clausen.)

Q. What was your name prior to this marriage?

A. Frances A. Justice.

Q. And how long had you been married to Mr. Justice?

A. Well, I will have to think.

Q. Oh, just approximately? A. 32 years.

Q. And what was your husband's name?

A. David Justice.

Q. And how long has he been dead?

A. Five years last February. [747—417]

Q. And you are the mother of Mrs. Guy L. Wilson?

A. Yes, sir.

Q. And what is her Christian name?

A. Ella.

Q. What was your maiden name, Mrs. Clausen?

A. Frances A. Crocker.

Q. How do you spell that? A. C-r-o-c-k-e-r.

Q. Where do you reside at present?

A. Clarkston.

Q. How long have you resided at Clarkston?

A. Twelve years,

Q. And prior to coming to Clarkston where did you reside?

A. Greenwood, Wisconsin.

Q. Are you the mother of Fred. Justice?

A. Yes, sir.

Q. And is he living or dead? A. He is dead.

Q. How long has he been dead?

A. Five years last April.

Q. Do you know the defendant, William Dwyer?

A. Yes, sir.

Q. How long have you known him?

A. Since I moved to Clarkston,—about twelve years.

(Testimony of Mrs. Frances A. Clausen.)

Q. Are you intimately acquainted with his wife, Mrs. Kittie Dwyer? A. Yes, sir.

Q. And you have known her the same length of time? A. Yes, sir.

Q. Were you next door neighbors?

A. No, sir.

Q. Is your acquaintance rather an intimate acquaintance? [748—418]

A. Why, just a neighborly acquaintance.

Q. You remember taking up a claim under the timber and stone act, do you?

A. Yes, sir—and I guess I will never have a chance to forget it, either.

Q. I show you timber and stone lands sworn statement of Frances A. Justice, dated April 25th, 1904, and ask you whether you signed that paper and filed the same in the land office at or about the date it bears? A. Well, that is my signature, all right.

Q. I show you the notice of publication of the same date, and ask you whether or not you filed that paper at the same time—April 25th, 1904?

A. Well, there is no signature on that.

Q. No; but I ask you if you remember having filed the paper? A. Yes, sir, I filed one.

Q. And I show you the testimony of Frances A. Justice given at final proof, dated July 13th, 1904, and ask you if you signed that paper?

A. I signed that.

Q. And the cross-examination of Frances A. Justice at the same time; is that your signature to that?

A. Yes, sir.

(Testimony of Mrs. Frances A. Clausen.)

Q. Now, with whom did you talk before taking up a claim about the propriety of taking up one?

Mr. TANNAHILL.—The defendants severally object to any evidence of the witness in regard to taking up a timber claim, in so far as the evidence relates to bills No. 388 and 407, upon the ground that the entry is not involved in those two particular actions, and the evidence is irrelevant, incompetent and immaterial.

The Reporter thereupon repeated the last question.

Mr. GORDON.—Answer the question, Mrs. Clausen. [749—419]

A. Why, I asked Mr. Dwyer to get me a claim; several times I talked to him about a claim, and asked him to get me one.

Q. That is William Dwyer? A. Yes, sir.

Q. Now, what else did you say to him at that time?

A. Well, I can't remember everything I said. I talked to him several times and asked him to get me a claim, and we was going down in California, and they had trouble there about claims, so we didn't go there to get a claim; and then I asked him to get me one in Oregon, and we didn't get one; then I asked him to get me one in Idaho, and he located me on a claim in Idaho.

Q. Yes; but now what was your arrangement with Mr. Dwyer before he located you?

A. No arrangement, only that he would locate me on a claim.

Q. And who was to pay the expenses?

(Testimony of Mrs. Frances A. Clausen.)

A. Well, I was to pay the expenses. I borrowed the money to pay them.

Q. Well, I am speaking about your arrangement with Mr. Dwyer. Now, who was to pay your expenses?

A. Well, I was to pay the expenses after I borrowed money to pay them.

Q. Now, explain how that was.

A. Well, I asked him to borrow the money for me to get a claim. First I tried to get money in Wisconsin to get a claim, and then I tried to get money of Mr. Crocker, a relative of Mr. Justice, and they only had money enough to get their own claims, and I had my place mortgaged, so that I couldn't very well borrow money myself, and I asked Mr. Dwyer as a favor if he would borrow money for me to get a claim, and he said he didn't know whether he could get it or not; he would try it.

Q. Now, what were you to get then for your claim?

A. Well, I didn't know what we would get out of it. We figured on [750—420] it, and he didn't know whether he could sell the claim or not right away; he didn't know just what he would get out of it.

Q. Didn't he tell you before you went up there that he would give you \$150.00 for your right?

A. No, sir.

Q. Mrs. Justice, you remember testifying—

A. I remember Mr. O'Fallon coming to the house, and I tried to tell him how it was, and he says, "Mrs.

(Testimony of Mrs. Frances A. Clausen.)

Justice, you are evading the truth," every time I would try to tell him how it was.

Q. Now, one moment. You made an affidavit for Mr. O'Fallon, didn't you?

A. Well, he scared me pretty near to death. I was pretty near crazy at the time—I was sick—and he said, "We know just how that was, and you will have to tell me just as it was," and I tried to tell him how it was, and he wouldn't allow me to tell it that way.

Q. You signed the affidavit and swore to it, didn't you?

A. I signed the paper there, but I was just about wild. I don't know what I did sign.

Q. And he wrote the paper while he was there, did he not?

A. Well, he didn't write it; there was another fellow there. They came and looked all through my house to see that I was alone, and then every time I tried to tell how it was he would say, "Now, you are evading the truth, Mrs. Justice. Now, we don't want to get you in trouble, but we know just how this is," and he would tell how it was. He says, "We have found out how this is," and he says, "We are sent here by the Government, and you must tell it the way it is."

Q. And you signed the affidavit?

A. Well, I signed the affidavit, for what could I do? I was scared half to death there by those two men.

Q. And you testified at the trial of Mr. Dwyer a

(Testimony of Mrs. Frances A. Clausen.)

year or more after that, in October or November, 1906, did you not? A. I testified in Moscow.

[751—421]

Q. At the trial of Mr. Dwyer? A. Yes, sir.

Q. And you told the truth then, though, didn't you?

A. I was kept in the sweat-box for two days. I didn't know what I was telling. I don't remember what I did tell there.

Q. What do you call a "sweat-box"?

A. Well, Mr. Ruick took me into a room, and he said, "Now, I am going to have the truth of this matter."

Q. That's all he wanted, wasn't it?

A. Well, he had it his way, and he wouldn't let me tell it my way.

Q. Did you tell anything but the truth on the witness-stand up there?

A. I don't remember what I told on the witness-stand.

Q. Did you tell the truth?

A. I told things as they wanted I should tell them then—as the way they said it was to be.

The SPECIAL EXAMINER.—Mr. Gordon asks you if you told the truth. You can answer that direct.

Mr. GORDON.—Q. Did you tell the truth then?

A. I didn't tell the truth if it was saying that there was a prior agreement.

Q. Now, I am not asking you that. What has put the notion of a prior agreement into your head?

(Testimony of Mrs. Frances A. Clausen.)

A. There is nothing; but I have told them all the time that there was no prior agreement.

Q. Now, I haven't asked you if there was one, Mrs. Clausen.

A. Yes; you asked me if there was one.

Q. No—I asked you what the arrangement was.

A. Well,—

Q. Then, you testified several days later, or at the following [752—422] spring—the 1907—the case of Kester, Kettenbach and Dwyer, did you not, at Moscow? A. I don't know if it was in the spring.

Q. Do you remember testifying at their trial?

A. Yes, sir; I remember of testifying.

Q. And didn't you tell the truth then?

A. Well, I was sick, and worried most to death. I don't know what I told at that time. I can tell you just how it was, if you will give me a chance to tell it.

Q. Well, now, when I get through—after I ask you these questions you may make any explanation that you desire. Now, Mrs. Clausen, after Mr. O'Fallon and Mr. Goodwin had gotten that affidavit from you, and just prior to the first trials at Moscow that I have adverted to, you took a little vacation, didn't you?

A. Of the trials, you say?

Q. The first trials that were had at Moscow, of Dwyer and Kester and Kettenbach?

A. Yes, sir; I went to Canada. I wasn't—

Q. Now, one moment—

The SPECIAL EXAMINER.—Just answer the questions, Mrs. Clausen. When Mr. Gordon asks you a question that can be answered by yes or no

(Testimony of Mrs. Frances A. Clausen.)

answer it, and don't go on to anything else until he asks you.

Mr. GORDON.—Q. And when you got ready to go on a vacation, your daughter (Mrs. Wilson) went to the station with you, didn't she?

A. No, she didn't.

Q. Where did you tell her that you were going to?

A. I didn't tell her where I was going to.

Q. Where did you start for?

A. I started for Spokane.

Q. And what was your purpose in going to Spokane? A. Well, just to take a trip. [753—423]

Q. Where were you going?

A. I intended to go to Seattle, or go there from Spokane after I got there.

Q. Now, didn't you intend to go to a conference or congress down to Coeur d'Alene?

A. I had intended a while before to go there, yes.

Q. And that congress was in session about that time, wasn't it? A. Yes, sir.

Q. And a friend of yours (a Mrs. Robinson) was going to receive a degree there, wasn't she?

A. I don't know any Mrs. Robinson.

Q. Well, who was the friend of yours who was going to receive a degree? A. Mrs. Morrison.

Q. And what degree was she to receive?

A. The Degree of Honor.

Q. And you were desirous of seeing that degree passed upon her; is that correct? A. Yes, sir.

Q. But you didn't go down to Coeur d'Alene—you went to Spokane? A. Yes, sir, I went to Spokane.

(Testimony of Mrs. Frances A. Clausen.)

Q. And how long did you remain in Spokane?

A. Till the first train went to Seattle.

Q. And then, you bought a ticket from here to Spokane, and then a ticket from Spokane to Seattle; is that correct? A. Yes, sir.

Q. And did you stop at a hotel in Spokane?

A. No, sir.

Q. Did you stop at a hotel in Seattle?

A. I did. [754—424]

Q. What hotel? A. The Tourist Hotel.

Q. Did you register at that hotel? A. I did.

Q. Under what name? A. Mrs. Frances.

Q. Mrs. Frances? A. Yes, sir.

Q. Did you have any reason for not registering as Mrs. Frances Justice?

A. No, sir, I had no reason that I know of. I could sign my name "Mrs. Frances" if I wanted to, and leave the "Justice" off.

Q. And you availed yourself of that privilege?

A. Yes, sir.

Q. And how long did you remain at Seattle?

A. I stayed overnight.

Q. And from Seattle did you buy another ticket and go somewhere?

A. Yes, sir; I went to Vancouver.

Q. And did you go to a hotel at Vancouver?

A. I did.

Q. What was the name of that hotel?

A. The Empire.

Q. And did you register there? A. I did.

Q. Under what name? A. Ada Crocker.

(Testimony of Mrs. Frances A. Clausen.)

Q. Ada Crocker?

A. Yes, sir. That is my name.

Q. And how long did you remain there?

A. I don't remember now how long I was there.

Q. Did you go anywhere else before you returned to your home at Clarkston? [755—425]

A. Yes, sir; I went several places.

Q. Well, state the itinerary, please.

A. Well, I went to Mount Pleasant; I went to North Vancouver, to New Westminster, and to Victoria. When I went to Victoria I had started to come home, and I didn't have any money only enough to pay my fare back to Vancouver, and I went back to Vancouver.

Q. And did you borrow any money from anybody to get back here?

A. No, sir; I didn't borrow money to get back here.

Q. Did you borrow any money while you were there?

A. Yes, sir; I borrowed money of Mr. Dick.

Q. Who was Mr. Dick?

A. Well, he is a gentleman that lives in North Vancouver.

Q. Had you ever met him before? A. No, sir.

Q. And did you come back alone, or did you come back with someone?

A. Oh, the Government sent a friend to come back with me.

Q. And what was that friend's name?

A. Mr. Glover.

Q. And do you know what his official capacity

(Testimony of Mrs. Frances A. Clausen.)

was? A. He was a detective.

Q. And that was how long before the first trial that you attended at Moscow, that you returned to your home; or were you brought right back to Moscow?

A. I was brought to Moscow.

Q. The trial was on at that time? A. Yes, sir.

Q. Now, did you tell anyone that you took that trip to avoid the unpleasantness of having to appear at the trial? A. No, sir, I never did.

Q. You never told anybody that?

A. No, sir. [756—426]

Q. Well, is that a fact?

A. That I went to avoid the trial?

Q. Well, you can put it that way if you want to; but I mean to avoid the unpleasantness of having to appear in court?

A. Well, I didn't want to appear.

Q. And you were not under subpoena?

A. No, sir, I wasn't under subpoena.

Q. And you just thought it would be all right for you to take your vacation and not have to be bothered with any trial, or the embarrassments and inconveniences that you might be submitted to at the trial; is that correct?

A. Well, Mr. O'Fallon told me if I would sign that paper that he would try and influence them not to have me as a witness on the stand, and I supposed he would do that.

Q. You didn't want to testify, did you?

A. No, sir, I didn't. It isn't very pleasant.

Q. Now, you went to view this claim, did you not?

(Testimony of Mrs. Frances A. Clausen.)

A. I did.

Q. And you went with Mr. Dwyer?

A. Yes, sir.

Q. And with whom else did you go?

A. Mr. Justice.

Q. That is your husband?

A. Yes, sir; and Mr. O'Brian.

Q. And was Mr. and Mrs. Guy Wilson along?

A. No, sir; Mrs. Guy Wilson wasn't here at the time.

Q. Guy Wilson was along? A. Yes, sir.

Q. And was your son Fred. along? A. No, sir.

Q. Have you named all the parties that you can remember that went on that excursion? [757—427]

A. That's all I think of now.

Q. And what city or town did you go to after leaving Lewiston, on the way to the claim?

A. I went to Orofino and Pierce City.

Q. Now, who paid your expenses from here to Pierce City?

A. Mr. Dwyer paid them, because I didn't have the money to pay them. I got him to furnish me the money.

Q. Yes; and he paid your expenses up to the claim and back; is that correct?

A. Yes, sir; but I paid him back.

Q. Well, that's all right.

Mr. TANNAHILL.—She has the right to answer the question fully and she has a right to make any explanation she desires to.

Mr. GORDON.—I agree with you thoroughly.

(Testimony of Mrs. Frances A. Clausen.)

WITNESS.—I told you first I had no money, and I got him to furnish me money.

Mr. GORDON.—I agree with you thoroughly, Mr. Tannahill, and I haven't raised the least objection to her answering, nor I won't.

Q. Now, what was said about the money by Mr. Dwyer? You told him you didn't have the money with which to pay for a claim; is that correct?

A. Yes, sir.

Q. And you asked Mr. Dwyer if he could get it for you? A. Yes, sir.

Q. And he said that he thought that he could?

A. Yes, sir.

Q. Now, was this arrangement to get all of the money that was necessary for filing fees, and expenses to the claim, and for final proof also?

A. Yes, sir.

Q. And this was before you had ever gone to the timber claim that you had had this talk with Mr. Dwyer? [758—428] A. Yes, sir.

Q. Now, what did you think you were going to get for this timber claim?

A. I didn't know how much I would get. He figured the way the claims was selling that it would be somewhere about \$200.00 more than the expenses.

Q. And did Mr. Dwyer tell you that before you went to the claim? A. Yes, sir.

Q. That is when you had your first talk with him?

A. I told him that I couldn't—

Q. No—just answer whether that was the first talk that you had with him? A. Yes, sir.

(Testimony of Mrs. Frances A. Clausen.)

Q. Now, you can go on and answer the rest that you want to say.

A. I told him that I couldn't borrow money to put into a timber claim to hold the claim very long, and I asked him about how much that a body could get out of a claim, and he figured on the claim and he thought somewhere about \$200.00 would be what a claim would bring above expenses.

Q. Now, do you remember whether or not you had an arrangement with Mr. Dwyer by which you were to take up this claim, and that he was to furnish all the expense money and the money for final proof, and that you were to get \$150.00 out of it, after all expenses had been taken out?

A. No, sir; he thought there would be about \$200.00 when I could sell the claim, the way we figured that it would bring about that, the way that other claims was selling.

Q. Now, see if this refreshes your recollection, Mrs. Justice. I am reading from record No. 1605 that has been referred to here in the stipulation the first day that we held a hearing in this case, the case of Kester and Kettenbach and Dwyer vs. the United States, at page 383, and from the context of the preceding pages the question refers, it [759—429] seems, to an understanding that you had with Mr. Dwyer before you went to the timber. Now, I will ask you if you remember this question being asked you, and whether you made the answer that I shall also read: "Question. Now, state what that understanding was?" "Answer. That he would get the

(Testimony of Mrs. Frances A. Clausen.)

money (meaning Dwyer) for me for a claim, and I would go up there and take a claim. It was a verbal agreement. I thought I would get \$150.00 clear of all my expenses." Now, do you remember that question being asked you, and that answer being made by you?

A. It might have been. I don't remember.

Q. Well, was that the truth, as you remember it now? A. Well, about \$150.00 or \$200.00.

Q. Well, is the rest of it correct as you understand it now?

A. I don't know how I can tell you different, how I understood about it, that it would be somewhere about \$150.00 or \$200.00 above expenses.

Q. Now, do you remember whether this question was asked you, and whether you made the answer which I shall also read: "Question. What were you to do with that claim to get \$150.00?" "Answer. I was to file on the claim and prove up on it." "Question. And then what were you to do after you proved up, if anything, in order to get the \$150.00?" "Answer. I gave a contract of a deed for the timber." "Question. I am asking you with regard to the understanding between you and Mr. Dwyer before you went up there. What were you to do with the land when you got title to it?" "Answer. I would sell it. I would get \$150.00 for my chance on the claim." "Question. For what chance? Who did you get the \$150.00 from?" "Answer. Well, he paid me the \$150.00, and I don't know—the claim was made over to the bank, if I remember right, to pay for the note

(Testimony of Mrs. Frances A. Clausen.)

which I had in the bank.” Now, do you remember those questions being asked you and those answers being given by you?

Mr. TANNAHILL.—We object to the question, upon the ground that the witness’ evidence is not materially different as a whole from the [760—430] evidence she is giving at the present time.

The SPECIAL EXAMINER.—Now, Mrs. Clausen, you may answer the question. Just repeat it.

Mr. GORDON.—Q. Do you remember whether or not those questions were asked you and those answers given by you?

A. I don’t remember how the questions were asked, or I don’t remember the answers I gave—all. It has been so long ago I have forgotten. I was sick at that time, and worried, and I can’t remember all that I said.

Q. And you are not very well now, are you, Mrs. Justice?

A. No, sir, I am not. I haven’t been—

Q. Well, now, isn’t that a fact?

A. I want to tell you what made me sick, too.

Mr. GORDON.—Well, now, I don’t think that is relevant.

The SPECIAL EXAMINER.—I don’t think that is relevant to the case, Mrs. Clausen.

WITNESS.—Well, I think it was.

Mr. GORDON—Q. I will, ask you if the facts are as they are purported to report you as having testified at the former trial?

A. I don’t understand that.

(Testimony of Mrs. Frances A. Clausen.)

Q. Maybe I can make myself plainer. You heard me read the questions, did you not? A. Yes, sir.

Q. And you heard the answers? A. Yes.

Q. Well, now, are the answers that were read, purporting to report your testimony as the facts of the case, are they true in that regard?

A. Well, I can't remember what answers—I don't know— [761—431]

Q. Well, now, I will show you the record and ask you to read from the question at the top of page 383: "Now, state what that understanding was," down to the bottom of the page, where the answer is—

WITNESS.—I can't see. I must have some water.

(Note by the Reporter: The witness fell forward from the witness-stand, apparently in a fainting condition, and was assisted by her husband and a lady friend.)

An informal recess was thereupon taken.

At 11:05 o'clock A. M. the hearing was resumed.

Mr. GORDON.—We offer in evidence the timber and stone lands sworn statement of Frances A. Justice, dated April 25th, 1904, the notice of publication, the testimony of Frances A. Justice given on final proof, and the cross-examination thereof, all of which have been identified by the witness, and the testimony of the witnesses on final proof, and the cross-examination of them, the Receiver's Receipt and the Register's Certificate, dated July 13th, 1904, a certified copy of the patent issued to Frances A. Justice, dated December 31st, 1904, all concerning

(Testimony of Mrs. Frances A. Clausen.)

the entry of lots 3 and 4, and the east half of the southwest quarter of section 19, township 38 north, of range 6 east of Boise meridian.

Mr. TANNAHILL.—The defendants severally waive any further identification of the papers, but object to the admission of any papers in evidence in so far as they relate to bills No. 388 and 407, upon the ground and for the reason that the entry is not involved in either of those actions, and they are irrelevant and immaterial. And the defendants severally object to the introduction of the final proof papers in evidence in support of any of the actions, and especially the testimony of claimant and the cross-examination of claimant, Frances A. Justice, the testimony of the witness William Dwyer, and the cross-examination of the witness William Dwyer, the testimony of the witness Edwin Bliss, and the cross-examination of the witness Edwin Bliss, and the [762—432] proof of publication; upon the ground that it relates to the final proof, and they are irrelevant, incompetent and immaterial.

Said documents were thereupon marked by the Reporter as Exhibits 21, 21A, 21B, 21C, 21D, 21E, 21F, 21G, 21H, 21I, 21J, and 21K.

The witness Mrs. Frances A. Clausen was thereupon excused from testifying further at this time.
[763—433]

[Testimony of Geary Van Artsdalen, for
Complainant.]

GEARY VAN ARTSDALEN, a witness called on
behalf of the complainant, being first duly sworn,
testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Geary Van Artsdalen?

A. Yes, sir.

Q. How old are you, Mr. Van Artsdalen?

A. Thirty-three.

Q. You are a married man? A. Yes, sir.

Q. How long have you been married?

A. Four years.

Q. Did I ask you where you resided?

A. No, sir.

Q. Where do you reside? A. Lewiston.

Q. How long have you resided in Lewiston?

A. A little over a year.

Q. Where did you reside at the time you took up a
timber claim? A. Weippe, Idaho.

Q. What was your employment then?

A. I was a teamster and farmer.

Q. With whom were you employed?

A. I was working for myself, freighting.

Q. You have a team of your own?

A. I did have at that time, yes.

Q. What kind of employment was this?

A. Well, it was freighting for the merchants at
Pierce, Idaho.

Q. You remember taking up a claim under the tim-

(Testimony of Geary Van Artsdalen.)

ber and stone act in 1903, do you? A. Yes, sir.

Q. Have you ever testified in court concerning the circumstances [764—434] or conditions of your taking up a claim, Mr. Van Artsdalen?

A. No, sir.

Q. Have you ever made a statement for anybody concerning this claim? A. No, sir, I haven't.

Q. Have you ever been asked to? A. No, sir.

Q. I show you timber and stone land sworn statement, dated October 31, 1903, signed Geary Van Artsdalen. A. Yes, sir.

Q. And ask you if you signed that paper and filed it in the land office on or about the date it bears?

A. Yes, sir, that is my handwriting.

Q. And you filed it in the land office about the date it bears? A. Yes, sir.

Q. I show you the nonmineral affidavit, of the same date, and ask you if that is your signature to that paper? A. Yes, sir.

Q. And the notice for publication, you filed that at the same time? A. Yes, sir.

Q. I show you the testimony of Geary Van Artsdalen, taken at final proof, January 11, 1904, and ask you if you signed that paper? A. Yes, sir.

Q. And the cross-examination taken at the same time. Is that your signature to that?

A. Yes, sir.

Q. Mr. Van Artsdalen, who first spoke with you about taking up a timber claim?

Mr. TANNAHILL.—The defendants severally object to the evidence of the witness in relation to

(Testimony of Geary Van Artsdalen.)

or in support of bills No. 407 and 388, upon the ground that the entry of the witness is not involved in these two particular actions, and the evidence is irrelevant and immaterial. [765—435]

The SPECIAL EXAMINER.—You may answer the question now.

The stenographer thereupon repeated the last question.

A. Mr. Jansen.

Q. What was his business?

A. He was locating timber.

Q. Are you acquainted with Mr. William Dwyer?

A. Yes, sir.

Q. Were you at that time? A. No, sir.

Q. Had you ever met him at that time?

A. No, sir.

Q. Do you know Mr. George H. Kester?

A. No, sir.

Q. Do you know Mr. William F. Kettenbach?

A. I know him by sight of late years,—not at that time.

Q. State what occurred between you and Mr. Jansen with reference to taking up a claim.

A. Nothing, only I wanted to take up a claim, and he knew where there was one.

Q. He knew where one was?

A. He did, yes, sir. He was locating timber at that time.

Q. Did he tell you how much it would cost?

A. I don't know as he did. I was a resident of that country and I knew all the time what it cost to

(Testimony of Geary Van Artsdalen.)

prove up on a claim.

Q. I mean for the location fee. A. Yes.

Q. How much was it? A. \$100.00, I think.

Q. Did you pay him \$100.00? A. Yes, sir.

Q. When?

A. When he located me. [766—436]

Q. Before you filed? A. Yes, sir.

Q. Did you know of any purchaser for timber claims at that time? A. No, sir.

Q. Did you own your home at that time?

A. Yes, sir.

Q. Was it a homestead?

A. It was a homestead, that is, by my father; I bought it from him.

Q. Did you go over this timber claim?

A. Yes, sir.

Q. How far was it from your home?

A. It was about eighteen miles.

Q. And did you file just after you had been over the claim? A. Yes.

Q. Who prepared the filing papers that I showed you here a few moments ago? A. Mr. Jansen.

Q. Where did he prepare them?

A. In the land office, I believe.

Q. He came down here with you?

A. He was living here at the time, yes.

Q. What was Mr. Jansen's name?

A. Charlie Jansen.

Q. Charlie Jansen? A. Yes, sir.

Q. Did you pay your own filing fees, or did you borrow the money for it? A. I paid it myself.

(Testimony of Geary Van Artsdalen.)

Q. Did you keep a bank account at that time?

A. No, sir.

Q. After you made your filing do you remember the occasion of your making your final proof?

A. Yes, sir. [767—437]

Q. Who notified you of the time to make proof?

A. I don't know who it was now. I got notice that it was time.

Q. You went over this land the first time some time before you filed? A. Yes, sir.

Q. And did you go over it alone that time, or with somebody? A. I went with somebody.

Q. Who were you with?

A. I was with Jack Maloney and Charlie Miles.

Q. Anyone else? A. That was all.

Q. Did you ask them to go with you, or was it just a pleasure trip you were on?

A. No, they was to go with me.

Q. Is this claim near the Myers claim?

A. I don't know. I don't know where Myers' claim is.

Q. Were they practical woodsmen?

A. Yes, sir.

Q. Was Mr. Myers a practical woodsman?

A. Miles, I said, Charlie Miles.

Q. What did you expect to do with this timber, Mr. Van Artsdalen?

A. Well, I supposed I would sell it after some length of time, which I did.

Q. You came to the land office to make your final proof? A. Yes, sir.

(Testimony of Geary Van Artsdalen.)

Q. Do you remember how much money you paid in the land office on that occasion?

A. It was four hundred and something. I don't remember just—

Q. Did you pay it by check or in cash?

A. I paid it in cash.

Q. Did you borrow any of that money?

A. No, sir.

Q. How long had you had that money? [768—438]

A. Oh, I had had it quite a little bit.

Q. About how long?

A. I hadn't had it all so very long,—six months or something like that.

Q. You had had some of it for six months, had you?

A. Some of it longer than that.

Q. How long was the longest time you had had any of it?

A. Oh, I don't know. I had had some of it all the time; I always have a little money.

Q. Did you borrow any of the money about the time you made your final proof? A. No, sir.

Q. You have sold your claim, have you?

A. Yes, sir.

Q. To whom did you sell it?

A. To the Clearwater Timber Company.

Q. With whom did you negotiate the sale?

A. Fitzgerald.

Q. What Fitzgerald?

A. Fitzgerald, that is all I know of his name.

(Testimony of Geary Van Artsdalen.)

Q. Was he an agent of the Clearwater Timber Company?

A. I suppose he was; he had an option on it.

Q. How long had he an option on it?

A. He had an option for thirty or sixty days, I don't know which.

Q. How long after you made proof did you sell?

A. I don't remember.

Q. The same day you made proof?

A. No, it was several months. It was maybe six months, maybe more. I don't know just how long I did hold it,—maybe it was a year,—I don't know.

Q. How much did you get for your claim?

A. I got \$1500.00.

Q. Where did you close this transaction? [769—

439] A. I closed it here.

Q. In whose office?

A. Let's see. I don't know whose office it was now.

Q. Where did you go to sign the deed?

A. I don't recall just the place.

Q. Can't you recall the location, or is it that you can't remember the name of the person's office?

A. That part of it seems to have slipped my memory; I don't just remember.

Q. Did you see Mr. Nat Brown in the transaction?

A. No, sir.

Q. Were you in the Lewiston National Bank in relation to the transaction?

A. It don't seem to me that I was.

Q. Did Mr. Fitzgerald give you a check in pay-

(Testimony of Geary Van Artsdalen.)

ment for this claim? A. No.

Q. Do you remember where he paid you the money?

A. He paid me part of it at home, and I don't know where he did pay the balance.

Q. How much did he pay you up at your home?

A. Let's see. I don't recall just how much it was now.

Q. How much actual cash did he give you altogether? A. I can't tell you that now either.

Q. Was any of it taken out for anything, any of the \$1500.00? A. No.

Q. Then, did he pay you \$1500.00?

A. He didn't pay all of it at one time. No, he paid me part of it on the option, and later on he paid me the balance.

Q. How much did he pay you when he took the option? A. He paid I think it was \$500.00.

Q. Was that after you made proof?

A. Yes, sir.

Q. Was the option in writing? [770—440]

A. Yes, sir.

Q. Where was that prepared?

A. That was prepared at Weippe.

Q. What was your purpose in coming down here to execute the deed? A. I don't know.

Q. Did you bring your wife? You didn't have a wife at that time, did you?

A. No, I didn't have a wife at that time.

Q. Now, can you remember where you signed that deed?

(Testimony of Geary Van Artsdalen.)

A. No, I can't recall where I did sign it.

Q. Did Mr. Fitzgerald have an office here?

A. No, I think not.

Q. Haven't you any remembrance whatever of the transaction here?

A. No, it don't seem to me that I can remember where the deed was signed. I have forgot that part of it altogether.

Q. Did you meet him here by appointment?

A. Why, if I met him at all it was by appointment, but I don't—

Q. Well, did you close the transaction with Mr. Fitzgerald, or did somebody else close the transaction for you? A. Let's see.

Mr. GORDON.—Can't you remember?

A. No, I can't recall where I did sign the deed at all.

Q. When you gave him the option did you give him a deed to be held in escrow?

A. No, I don't think I did. He had an option drew up there and I signed the option.

Q. Didn't you give him a deed at the same time, and it was to be held in some bank until the money was paid, and that you went to the bank and signed the deed and got so much money? A. No.

Q. You have no recollection whatever of signing the deed?

A. No, I haven't any recollection whatever of signing the deed. [771—441]

Q. Are you sure you did sign a deed?

A. Well, I guess I must have, or else it would be

(Testimony of Geary Van Artsdalen.)

mine yet, wouldn't it? (Laughing.)

Q. I guess it would.

A. It seems to have slipped my mind altogether; I can't recall.

Mr. GORDON.—We offer in evidence timber and stone land sworn statement of Geary Van Artsdalen, dated October 31, 1903, the nonmineral affidavit, the notice for publication, the testimony of Geary Van Artsdalen on final proof, the cross-examination of Van Artsdalen taken at the same time, all of which papers have been identified by the witness; the testimony of the witnesses at final proof, and the cross-examination of them, the receiver's receipt and the register's certificate, dated January 11, 1904, certified copy of the patent issued to Mr. Geary Van Artsdalen, dated November 1, 1904, all relating to the entry of the northeast quarter of section 25, township 37 north of range 5 east of Boise meridian.

Said above-mentioned papers were thereupon marked by the stenographer as Exhibits 22, 22A, 22B, 22C, 22D, 22E, 22F, 22G, 22H, 22I, 22J, 22K, 22L, and 22M.

Mr. TANNAHILL.—The defendants severally waive any further identification of the papers, but object to each of the documents, on the ground that they are irrelevant and immaterial, it affirmatively appearing that the defendants, or none of them, had any connection with the entry, that they never owned the land, and that the entry is legal in every respect. The defendants further severally object to the final proof papers, on the ground that they are irrelevant

(Testimony of Geary Van Artsdalen.)

and immaterial, and matters occurring long after the filing of the sworn statement.

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mr. Van Artsdalen, as I understand you, you had no agreement to sell your land to anyone before you made your final proof?

A. No, sir, I didn't.

Q. And you never did sell it to either of the defendants? A. No, sir.

Q. And had no agreement to sell it to either of the defendants? [772—442] A. No, sir.

[**Testimony of Bertsel H. Ferris, for Complainant.**]

BERTSEL H. FERRIS, a witness called on behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Bertsel H. Ferris?

A. Yes, sir.

Q. How old are you, Mr. Ferris?

A. Thirty-five.

Q. Where do you reside? A. Lewiston, Idaho.

Q. How long have you resided in Lewiston?

A. About eight or nine years.

Q. Are you married? A. Yes, sir.

Q. Were you married in March, 1903?

A. Five years ago last Christmas.

Q. Then, you weren't married in March, 1903?

A. No, sir.

(Testimony of Bertsel H. Ferris.)

Q. What was your occupation at that time?

A. Electrician.

Q. Do you still follow the same business now?

A. Yes, sir.

Q. What was your salary in 1903?

A. About \$65.00 or \$70.00 at that time.

Q. Per month? A. \$65.00 or \$75.00.

Q. Do you remember when you came to Idaho?

[773—443]

A. I came out first in 1892. I was out two or three years and went back, then came out the last time in 1901, I think, or 1902.

Q. 1901 or 1902? A. Yes, sir.

Q. Do you remember taking up a claim under the timber and stone act in March, 1903?

A. Yes, sir.

Q. I show you timber and stone land sworn statement, dated March 31, 1903, signed Bertsel H. Ferris, and ask you if you signed that and filed the same in the land office about the date it bears?

A. Yes, sir, that is my signature.

Q. I show you the testimony of Bertsel H. Ferris, given on final proof, dated June 26, 1903, and ask you if you signed that paper.

A. Yes, sir, that is my signature.

Q. I show you the cross-examination of Bertsel H. Ferris, taken at the same time, and ask you if that is your signature? A. Yes, sir.

Q. I show you a note, dated March 31, 1903, for \$125.00, payable to the order of Curtis Thatcher one year after date, signed Bertsel H. Ferris.

(Testimony of Bertsel H. Ferris.)

A. Yes, sir, that is my signature.

Q. You signed and delivered that to whom?

A. Clarence W. Robnett.

Q. Who first spoke with you about taking up a timber claim, Mr. Ferris?

Mr. TANNAHILL.—We object to any evidence of the witness relative to his taking up a timber claim, on the ground that it is irrelevant and immaterial, the entry of the witness not being involved in any of the actions.

A. Mr. Clarence Robnett.

Mr. GORDON.—Did you know William F. Kettenbach at the time you took up your [774—444] timber claim? A. Yes, sir.

Q. Intimately acquainted with him?

A. I had met him.

Q. Did you know Mr. George H. Kester at that time? A. Yes, sir.

Q. Now, state what conversation Mr. Robnett had with you relative to taking up this timber claim.

Mr. TANNAHILL.—We object to any conversation between Mr. Robnett and the witness, upon the ground that the defendants were not present and on the ground that it is hearsay, irrelevant and immaterial.

Mr. GORDON.—Proceed, Mr. Ferris.

A. I met Mr. Robnett on the street, and he asked me if I wanted to take a claim, and I told him I did, but I didn't have the money to take it with, and he said he could fix that he thought, he could get the money for me.

(Testimony of Bertsel H. Ferris.)

Q. Well, what else was said?

A. He said if I would come up to the house we would talk it over, and I asked him if he could get a claim for a friend of mine, Mr. Robinson, and he said he thought he could.

Q. What Mr. Robinson?

A. George Ray Robinson.

Q. Now, was anything said in that conversation as to what you could get out of your claim?

A. Not that I remember of.

Q. Was anything—

A. He said he thought he could sell it for us.

Q. Did he tell you how much you could get for it?

A. I don't remember.

Q. Was anything said at that time about who would pay the expenses of the filing, etc.?

A. No, sir. I paid that myself. [775—445]

Q. Was anything said about a location fee?

A. Why, I signed a note for the location. I don't know whether there was anything said about it at that time or not.

Q. Did anybody locate you?

A. Mr. William Benton took us up there. We went up the river with him.

Q. Tell where you went with Mr. Benton.

A. We went up above Big Island on the river.

Q. How far is that from here?

A. I don't know just how far it is.

Q. Well, about how far?

A. Probably fifty miles by the railroad.

Q. How far was the claim from there?

(Testimony of Bertsel H. Ferris.)

A. I don't know just how far; I couldn't say.

Q. Have you ever been on the claim?

A. We went up there towards it, above Big Island, and I thought I was on it or near it at that time; I don't know whether I was.

Q. Did you think you were on the claim?

A. I thought at the time that I was on the claim, because I understood it went down to the river.

Q. Did Mr. Robinson and you and Mr. Benton go together? A. We was all in a bunch.

Q. Wasn't there some discussion about not going to the claim? A. I don't remember.

Q. Don't you remember whether or not Mr. Benton told you you were within twelve or fifteen miles of the claim, and that under the arrangement you had you didn't have to go on the claim?

A. I don't remember. We were up the year before, or I was, in fact further over eight or nine miles from there.

Q. Yes, but I am speaking about this occasion. You have testified at one or two trials before, haven't you, Mr. Ferris? A. Yes, sir.

Q. And you came to my office Friday or Saturday evening, did you not? [776—446] A. Yes, sir.

Q. And you read the testimony over that you gave at those trials? A. Yes, sir.

Q. Was there anything in the printed testimony of those trials that wasn't correct?

A. Not that I remember of.

Q. Do you remember whether or not that question was asked you at the former trial?

(Testimony of Bertsel H. Ferris.)

A. No, I don't. It probably was.

Q. Do you remember whether or not Mr. Robnett suggested that it wasn't necessary to go on the claim, and that if you took the time to go clear up to the claim that it might be filed on before you had time to make an entry? A. Yes, sir.

Q. That was before you filed, wasn't it?

A. Yes, sir.

Q. When was that conversation with Robnett?

A. I think it was at his house, if I am not mistaken, or in the directors' room at the bank, I don't know which now.

Q. Before you filed?

A. He said we had better file right away, because it may be too late, someone might get in ahead of us.

Q. Now, who told you to go to see Mr. Benton?

A. Mr. Robnett.

Q. Did you make that arrangement with Mr. Benton, or were your arrangements made with Mr. Robnett? A. They were made with Robnett.

Q. What did you have to say when you went to see Benton?

A. Well, I didn't see him I don't think until we started up there.

Q. Did you start from here alone?

A. No, there was several of us went.

Q. Who went with you? [777—447]

A. Why, Mr. Achin, Mr. Allen and Mr. Robinson. I don't remember any of the others. There were two or three more.

Q. Who gave you the description of the land that

(Testimony of Bertsel H. Ferris.)

you were to file on? A. Mr. Robnett.

Q. Mr. Benton didn't give you the description of it, did he? A. No, sir.

Q. You went up above Big Island somewhere and then returned? A. Yes, sir.

Q. How long after you returned was it before you went to see Robnett? A. I don't remember.

Q. Well, was it the next day or a week or how long was it? A. I can't say.

Q. Where did you go to see him? Where was he?

A. I met him on the street awhile afterwards, I don't know just how long, and he told me when we would have to prove up.

Q. No,—I am talking about before you filed now.

A. Oh, before we filed.

Q. Yes.

A. Why, we filed before we went up there.

Q. You filed before you started up there?

A. Yes, sir. I think it was the next day after we was up to the house, if I am not mistaken.

Q. This was before you met Benton?

A. Yes, sir.

Q. And before you had started out towards the land even? A. Yes, sir.

Q. Where did you get your filing papers?

A. I don't— I think, if I am not mistaken, that we got them in the directors' room at the bank, if I am not mistaken.

Q. At the Lewiston National Bank? [778—448]

A. Yes, sir. At any rate I went over to Nicker-son's office across the street and had them made out.

(Testimony of Bertsel H. Ferris.)

Q. Who went with you to the directors' room in the bank to see Mr. Robnett? A. Mr. Robinson.

Q. George Ray Robinson? A. Yes, sir.

Q. Did Robnett go with you over to Nickerson's office? A. No.

Q. Did he give you any paper to take over there?

A. I don't remember now whether I got the paper there or got it over to Nickerson's. That isn't clear.

Q. And you went to Mr. Nickerson's office, did you? A. Yes, sir.

Q. And he prepared the papers there for you?

A. I think so. He fixed out something. I know I paid him a \$1.00 fee.

Q. Was there any discussion between you and Mr. Robnett as to an affidavit you should have to make in that sworn statement that you have identified?

A. He said we would have to swear we had been on the ground.

Q. Did you demur to that?

A. I told him that I hadn't been on the ground.

Q. What did he say?

A. He said that I had been up near there the year before, and that I could say I had been on the ground and it would be all right.

Q. This note that I showed you that you identified runs to Curtis Thatcher. Did you know Mr. Thatcher? A. Yes, sir.

Q. Had you ever done any business with him?

A. I never had; no, sir. [779—449]

Q. Now, was Robnett to furnish you all the money for the taking up of this claim?

(Testimony of Bertsel H. Ferris.)

A. He was to furnish money for the location and estimation, as I understand, and the proving up.

Q. And the proving up? A. Yes, sir.

Q. And what were you to do with this land?

A. I was to sell it.

Q. Who to?

A. Whoever I could. I gave an option on it.

Q. Wasn't there any arrangement before you gave an option?

A. No. He said he would try to sell it for me.

Q. When was he to try to sell it?

A. Well, I don't remember of any particular time.

Q. You went up there in March, did you not? I mean you filed your papers in March?

A. I think so.

Q. And in your first talk with Robnett wasn't he to procure the purchaser before July?

Mr. TANNAHILL.—We object to that as leading and suggestive. This is your own witness, and you have no right to cross-examine him or ask him such leading questions.

A. I don't remember of any particular time, Mr. Gordon.

Q. There wasn't any particular time set?

A. Not that I remember.

Q. Did you know that Robnett had been in that business, furnishing people money to take up claims?

A. No, sir, not until he made the arrangements with me to get the money.

Q. Now, was it your understanding that you were

(Testimony of Bertsel H. Ferris.)

to turn the claim over to him, or to whoever he suggested?

Mr. TANNAHILL.—Objected to as leading and suggestive. [780—450]

A. No, I had no arrangements only as much as he said he would try to sell it for me.

Q. When was he to—how much was he to get over and above what the expenses were?

A. I don't know as I remember; I don't remember of any especial amount.

Q. Was any amount mentioned?

A. No, not that I remember of.

Q. What was your understanding that Robnett wanted with this claim?

Mr. TANNAHILL.—We object to that as immaterial, and we object to it on the further ground that the witness never testified that Robnett wanted the claim.

The reporter thereupon read the last question.

A. I had no understanding.

Q. You had no understanding?

A. No, not that I remember of.

Q. Did you think it strange that somebody should come to you and offer to lend you the money to take up a timber claim, and loan you the money to pay for it, and was to procure a purchaser, without any interest in it himself?

Mr. TANNAHILL.—We object to that as leading and suggestive and immaterial.

A. I never thought much about it, Mr. Gordon.

Mr. GORDON.—Q. Did that seem to you to be an unusual proceeding?

(Testimony of Bertsel H. Ferris.)

A. Yes, it seems so now. I never thought about it before. If I had thought much about it I probably wouldn't have taken it in the first place.

Q. Now, you went to the land office when you made your sworn statement and swore that you had been on the ground. Is that correct?

Mr. TANNAHILL.—We object to it as immaterial, and on the further ground that it wasn't necessary for him to be on the land, and if he [781—451] hadn't been on the land and did say he had been on the land it wasn't perjury, and it is immaterial and irrelevant.

The last question was thereupon repeated by the stenographer.

A. Yes, sir.

Mr. GORDON.—Q. You knew that wasn't true when you went there, didn't you?

Mr. TANNAHILL.—Objected to as immaterial.

A. Yes, sir.

Mr. GORDON.—Q. And you and Robnett had talked that over, had you?

Mr. TANNAHILL.—Objected to as immaterial and leading and suggestive.

A. Yes, sir.

Mr. GORDON.—Q. Who notified you of the time you were to make proof? A. Mr. Robnett.

Q. What was said about it? That it was time to make proof, or what? A. That was all, I believe.

Q. Was anything said about the money?

A. He said at the time, "Come over to the bank and I will get the money to prove up on."

(Testimony of Bertsel H. Ferris.)

Q. And you went over to the bank?

A. Yes, sir.

Q. With whom did you go to the bank?

A. I went with Mr. Robinson, I believe, both of us, if I am not mistaken.

Q. Is Mr. Robinson related to you? A. No, sir.

Q. Are you in any way related to any of the defendants? A. No, sir.

Q. And when you went over to the bank whom did you see? A. Sir? [782—452]

Q. Whom did you see at the bank when you went there on this occasion? A. Mr. Robnett.

Q. In what part of the bank did you see him?

A. I don't remember whether it was—I know I got the money at the teller's window, I believe, in front. I don't remember.

Q. Then, where did you go?

A. I went upstairs to the land office upstairs.

Q. Had you talked to Mr. Robnett before you got the money at the teller's window in the bank?

A. I don't remember.

Q. I will ask you whether or not you remember going back into the directors' room again with Mr. Robnett just prior to making final proof, and you and Mr. Robinson had some talk there with him?

A. We were there a couple of different times in the directors' room. I don't remember whether it was that occasion or not, and we looked over some papers in there. I don't know whether it was before the filing or the final proof.

Q. Do you remember what these papers related to?

(Testimony of Bertsel H. Ferris.)

A. I don't know whether it was final proof papers at that time or the others, when I was in there. That isn't clear, it has been so long ago.

Q. Now, on those papers that were shown you by Mr. Robnett were the questions written out?

A. Yes, sir.

Q. And were answers made to them?

A. I think so.

Q. Do you remember whether or not this testimony that you have identified as given by claimant on final proof and cross-examination of you, taken in the land office at final proof, which you have identified, was shown you in blank at that time?

A. I have seen the papers. I signed them. [783—453]

Q. I know. But what I am trying to get at is whether you and Mr. Robnett and Mr. Robinson went over papers similar in form to those just before you made your final proof, and discussed the propriety of answering the questions. A. We did.

Mr. TANNAHILL.—We object to it as immaterial and irrelevant.

WITNESS.—I can't think whether it was these papers or the application, the filing.

Mr. GORDON.—Q. I understood you to say you went over the filing papers too, did you not, the first time you were at the bank? A. Yes.

Q. And that was the time you had the discussion as to whether it was proper to swear that you had been on the land? A. Yes, sir.

Q. Now, do you remember these papers when you

(Testimony of Bertsel H. Ferris.)

went to make your final proof, or were they shown you at the first time too? A. I think they were.

Q. And you were given some money by Mr. Robnett that day? A. For the final proof, yes, sir.

Q. How much?

A. Four hundred and some odd dollars, I believe; I forget the amount.

Q. And the land office was in the bank building at that time, was it not? A. Upstairs; yes, sir.

Q. I understand that you were given that money in the bank by Mr. Robnett? A. Yes, sir.

Q. Where did you go from the bank? Directly upstairs? A. Yes, sir.

Q. And you made your final proof? [784—454]

A. Yes, sir.

Q. And paid the money in that Mr. Robnett had given you? A. Yes, sir.

Q. Now, do you remember while you were in the bank with Mr. Robnett at that time whether or not you discussed the questions that would be asked you as to where you received the money, and what you should say about that?

Mr. TANNAHILL.—Objected to as immaterial.

A. I don't remember hardly.

Mr. GORDON.—Q. Can't you answer?

A. I can't remember; I don't remember, Mr. Gordon.

Q. Was it the same money that Robnett gave you that you made your final proof with? A. Yes, sir.

Q. Did you use any of your own money?

A. I paid for the making out of the papers, that

(Testimony of Bertsel H. Ferris.)

is, for the final proof, I think, with my own money. I paid all my own expenses.

Q. No, but I mean, I am speaking about the money you paid at the land office to purchase this land. Did you pay any of your own money for that?

A. Yes, sir.

Q. How much?

A. Ten or twelve dollars, something like that, I think.

Q. Wasn't it the first time you went to the land office that you paid that ten or twelve dollars?

A. It may have been.

Q. Don't you know there wasn't any fee when you made your final proof?

A. It was on the application I know I paid the fee.

Q. Do you remember whether or not this question was discussed with you by Mr. Robnett just before making your final proof: "Where did you get the money with which to pay for this land and how long have you had [785—455] the same in your actual possession?" Do you remember whether you and Mr. Robnett discussed that question?

A. No, I don't.

Mr. TANNAHILL.—The Court understands that we have an objection to all of this evidence relating to the final proof.

The SPECIAL EXAMINER.—Yes, that can be so understood.

Mr. GORDON.—Q. Do you remember that you answered: "Earned most of it in my trade and borrowed the balance?"

(Testimony of Bertsel H. Ferris.)

A. Yes, sir, I remember it now.

Q. Was that true or was it not true?

A. Well, I earned part of it.

Q. What part of it did you earn?

A. My filing fee and my expenses.

Q. But the question at that time was, "Where did you get the money you were paying in the land office at that time?" You got all that money from Robnett, didn't you? A. Yes, sir.

Q. Then, why did you answer the question as you did?

Mr. TANNAHILL.—We object to that as immaterial and leading and suggestive.

Mr. GORDON.—Q. Didn't you and Mr. Robnett go over that question? A. I guess so.

Q. I don't want you to guess at it. If you don't know, say so. A. I don't remember, Mr. Gordon.

Q. You signed that paper that I am reading from, did you not? A. Yes, sir.

Q. Do you remember this question being asked you when you paid that money that you got from Robnett into the land office—question 16: "Did you pay out of your own individual funds all of the expenses in connection with making this filing, and do you expect to pay for the [786—456] land with your own money?" To which you answered: "Yes. Yes." Do you remember that question being asked you and that answer made by you?

A. Yes, sir.

Q. Was that answer true or not true?

A. It wasn't true.

(Testimony of Bertsel H. Ferris.)

Q. And you knew it at the time, did you not?

A. Yes, sir.

Q. Did you discuss that question with Mr. Robnett? A. I think so.

Q. Now, at the time that you paid the money in the land office at final proof they gave you a receipt for it, did they not? A. I think so, yes.

Q. Do you remember what you did with that receipt? Did you take that down and give it to Mr. Robnett? A. I don't remember.

Q. Did you make a note that day to secure the money that you had gotten from Robnett?

A. I signed a note, yes, sir.

Q. Do you remember how much it was for?

A. Seven hundred and some odd dollars.

Q. Was it \$728.75? A. Yes, sir.

Q. Now, you never met Mr. Curtis Thatcher in this transaction, did you? A. Not at all.

Q. And the note that you signed for \$125.00, you made that the date that you made your filing, did you? A. I am not sure about it; I think so.

Q. It bears the same date.

A. Yes, sir. It must have been.

Q. And you gave that to Robnett? [787—457]

A. I took up that note with the other one, I think.

Q. You took that one up with the \$728.00 note?

A. Yes, sir.

Q. Do you know how that \$728.00 note was endorsed? A. No, I don't remember now.

Q. Wasn't that to C. W. Robnett?

A. I think so. I think it was.

(Testimony of Bertsel H. Ferris.)

Q. Do you remember whether or not when it was handed back to you it was endorsed C. W. Robnett to William F. Kettenbach, without recourse?

A. Yes, sir.

Mr. TANNAHILL.—We move to strike out that answer, on the ground that the note is the best evidence.

Mr. GORDON.—I will produce it if you want me to. Whatever you object to that way I will put in. I am just doing this in the economy of time, is all.

Q. Do you remember the same date that you made your proof that you gave a mortgage to Mr. Robnett to secure the payment of that note?

A. Yes, sir.

Q. Now, how long after that did you make a deed to this property?

A. I don't remember, Mr. Gordon.

Q. Well, approximately?

A. I signed it over to Mr. W. F. Kettenbach; it was probably a couple of years or so, two years.

Q. What was that transaction?

A. I had a notice from him that the note was due,—two different ones, I believe. Then, I got a notice that the mortgage,—that was what I meant, the mortgage,—they were going to foreclose, so I just went up and signed it over to him, my wife and I.

Q. Did you get any money out of him?

A. No, sir.

Q. I show you letter dated June 15, 1906, addressed to Bertsel H. Ferris, signed W. F. Ketten-

(Testimony of Bertsel H. Ferris.)

bach, and ask you if that is the letter you [788—
458] received from Mr. Kettenbach? A. It is.

Q. Do you know Mr. Kettenbach's handwriting?

A. No, I don't.

Mr. GORDON.—Do you want me to prove that too?

Mr. TANNAHILL.—No. Mr. Kettenbach admitted it in the other trial.

WITNESS.—I received one or two of those. I don't recognize the handwriting, of course.

Mr. GORDON.—It is admitted that that is Mr. Kettenbach's signature, is it?

Mr. TANNAHILL.—Yes.

Mr. GORDON.—Q. It was just about this time, was it, that you made the deed to him?

A. I don't remember just how long afterwards. I think I received two of those notices, if I am not mistaken.

Q. Did you ever pay any interest on that note that you gave? A. I don't know as to that.

Q. Well, do you remember ever paying any interest on it? A. No, I never paid any.

Q. Do you know whether you were ever asked to pay the note or any interest on it?

A. No. I met Robnett one day and he told me,—I don't know just when it was,—that Kettenbach wanted me to fix that up.

Q. Where did you make the deed? In the bank?

A. Oh. You mean the final transaction?

Q. Yes.

(Testimony of Bertsel H. Ferris.)

A. No. In McDonald's office was where it was made over.

Q. Who told you to go there?

A. I don't remember now who it was.

Q. Well, did any of the parties you have mentioned tell you to go there, or did you just go there of your own notion? [789—459]

A. Well, I don't remember; that isn't clear now, Mr. Gordon.

Q. To whom did you deliver the deed?

A. McDonald, I think.

Q. You left the deed there with McDonald?

A. I signed it over there at McDonald's office.

Q. Was anybody present but you and McDonald and your wife? A. No, no one present.

Q. Did you receive any money in payment for this property? A. Nothing at all.

Q. Were the notes handed back to you at that time that you had given? A. I think so.

Q. Did you ever get any money out of this claim?

A. Nothing at all.

Q. Were you out the expense you had been put to for your filing fee? A. Yes, sir, everything.

Q. Did you have to pay any expenses in this matter? A. Sir?

Q. Did you have to pay any expenses in this matter other than the filing fee? A. No, sir.

Q. Was there a charge put against you for attorney's fees?

A. No, sir, not that I remember of.

Q. Did I ask you whether or not, the day before

(Testimony of Bertsel H. Ferris.)

you made your final proof, you, at the suggestion of Robnett, went to the bank and talked over the final proof questions?

Mr. TANNAHILL.—The same objection as to the other questions.

A. You asked that once, didn't you?

Mr. GORDON.—Q. I say, did I understand you to say that you did?

A. I think so. [790—460]

Q. Mr. Robinson was present at the time?

A. Yes, sir.

Q. And this conversation was in the director's room at the bank? A. I think so.

Q. The first time that you talked with Robnett about taking up a claim you asked if he could get one for your friend Robinson under the same conditions? A. Yes, sir.

Q. You didn't sign this last note that you have referred to, for seven hundred and some odd dollars, until after you made your proof. Is that correct?

A. I don't remember when it was just, whether it was before or after.

Q. Do you remember whether or not you went down from the land office to the bank and then signed that note?

A. I signed something when I got the money; I don't remember whether there was anything afterwards or not.

Q. Do you remember testifying at the trial against Mr. Robnett in October or November, 1906, in case No. 1607, Circuit Court of Appeals, Ninth

(Testimony of Bertsel H. Ferris.)

Circuit, the question being asked you: "Did you go right back down to the bank?" "Answer. Yes, sir." From the context it would appear that that was when you made your final proof. "Question. At whose suggestion?" "Answer. Mr. Robnett's." "Question. What did Mr. Robnett say about it?" "Answer. After he gave me the money he says, 'Come down when you prove up and we will fix it up.' " "Question. And you signed a note and mortgage, did you?" "Answer. I think so. I signed a note, I know." "Question. Where were you when you signed it?" "Answer. At the window in front of the bank." "Question. Who presented you the note for your signature?" "Answer. Mr. Robnett." Does that refresh your recollection as to whether it was before or after?

A. Yes, sir. [791—461]

Q. Now, which was it?

A. It was after. I remember now. I wasn't sure whether it was or—

Mr. GORDON.—We offer in evidence timber and stone land sworn statement of Bertsel H. Ferris, the testimony of Bertsel H. Ferris given on final proof, and the cross-examination thereof, which papers have been identified by the witness; the receiver's receipt and the register's certificate, dated June 26, 1903, the note signed Bertsel H. Ferris, dated March 31, 1903, to the order of Curtis Thatcher, for \$125.00 in one year, which has been identified by the witness, the letter dated June 15, 1906, addressed to Bertsel H. Ferris, signed William F. Kettenbach, which has

(Testimony of Bertsel H. Ferris.)

been heretofore identified; certified copy of patent issued to Bertsel H. Ferris, dated August 3, 1904, all relating to the entry of lot 3, and the northwest quarter of the southeast quarter and the north half of the southwest quarter of section 24, township 39 north of range 3 east, Boise meridian. We also offer certified copy of mortgage, dated June 26, 1903, made by Bertsel H. Ferris to Clarence W. Robnett, to secure note dated June 26, 1903, payable in one year, in the sum of \$728.75, to the order of Clarence W. Robnett, executed and acknowledged by Bertsel H. Ferris June 26, 1903, before John E. Nickerson, Notary Public, and recorded at the request of W. F. Kettenbach July 1, 1903. This note here is endorsed by Robnett and Benton. Now if you want me to bring them in here to identify that I can do so.

Mr. TANNAHILL.—No, I don't care about that. I wanted the other note that you said was endorsed by Kettenbach without recourse.

Mr. GORDON.—I will bring that down. I haven't that among my papers. You will admit that this note is endorsed by C. W. Robnett and William B. Benton?

Mr. TANNAHILL.—Yes.

The above documents were thereupon marked by the stenographer as Exhibits 23, 23A, 23B, 23C, 23D, 23E, 23F, 23G, 23H, and 23I. [792—462]

Mr. TANNAHILL.—The defendants severally waive any further identification of the papers just offered in evidence, but severally object to each and all of the documents upon the ground that they are

(Testimony of Bertsel H. Ferris.)

incompetent, irrelevant and immaterial, the entry of the witness not being involved in any of the actions. And the defendants further severally object to all of the final proof papers, including the testimony of claimant, the cross-examination of claimant, the testimony of his witnesses and the cross-examination of his witnesses, upon the ground that they are irrelevant and immaterial.

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mr. Ferris, I understand that you had no agreement with Mr. Robnett or anyone else for the sale of your land before you made final proof? You hadn't agreed to sell your land to anyone before you made final proof?

A. Only that Mr. Robnett said he would try to sell it for me.

Q. But you had no agreement that you would sell it to any particular person? A. No, sir.

Q. Then, your affidavit that you made when you filed your sworn statement, "that I have made no other application under said acts; that I do not apply to purchase the land above described on speculation, but in good faith to apply the same to my own exclusive use and benefit, and that I have not, directly or indirectly, made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself." That affidavit was true, was it?

(Testimony of Bertsel H. Ferris.)

A. Well, Mr. Robnett said he would try to sell it for me, that is all. [793—463]

Q. Well, you understand that that isn't a contract for the sale of it. You had made no contract?

A. I had signed no contract.

Q. To sell it to Robnett or to anyone else?

A. No.

Q. Then, that affidavit that you made at that time was true? A. Yes, sir.

Q. Now, you had had no talk with Mr. Kester or Mr. Kettenbach or Mr. Dwyer about it up to the time you made your final proof, had you?

A. No, sir.

Q. The first talk you had with either of them about it was after Mr. Kettenbach notified you that your note was due?

A. No, I had no talk with him then; he simply wrote me those notes.

Q. Did you have a talk with Mr. Kettenbach about it after he wrote you?

A. I don't remember of ever having any talk with him.

Q. You had no talk with him about it in which he told you you had better keep your land and try to pay the interest?

A. I don't remember as to that, Mr. Tannahill.

Q. And you had kept your land about how long, did you say you kept it before you sold it?

A. Well, it was two or three years; I think it was two years anyway.

Q. And that is your first agreement or contract

(Testimony of Bertsel H. Ferris.)

that you had made for the sale of your land?

A. Sir?

Q. That was the first contract or agreement you had made for the sale of your land up to that time?

A. Which?

Q. The one you made two or three years afterwards, when you sold to Kettenbach. [794—464]

A. When he took it on the mortgage.

Q. Had you tried to sell it to anyone else?

A. I gave an option to sell it.

Q. Who did you give an option to?

A. Fred Emory.

Q. Did you give an option to anyone else?

A. I think I gave two; I don't remember who the other one was to.

Q. Do you remember that you gave two options to Fred Emory and one option to Joe Malloy?

A. That may be.

Q. But you wasn't able to sell it to either one of them? A. No.

Q. Do you remember that Mr. Kettenbach told you he would rather not buy your land, that he would rather you would pay off the note and mortgage? A. I don't remember that.

Q. He might have told you that?

A. He might have. I don't remember having any conversation with him.

Redirect Examination.

(By Mr. GORDON.)

Q. Now, I have noticed that you said a couple of times, in answer to Mr. Tannahill's questions, that

(Testimony of Bertsel H. Ferris.)

you had no written contract.

Mr. TANNAHILL.—We object to that. The witness didn't say that.

Mr. GORDON.—Well, I will call the record on you.

Thereupon the stenographer read the answer of the witness as follows: "I had signed no contract."

WITNESS.—I thought Mr. Tannahill meant if there had been a contract or anything presented to me to sign. I done nothing at all like that.

Mr. GORDON.—Q. But your original understanding with Robnett was that he was to [795—465] sell the land for you? A. Yes, sir.

Q. And that understanding was had before you filed any paper?

A. That he would sell it for me, yes, sir.

Q. Would you have sold to anybody else at that time? A. Yes, sir.

Q. You would? A. I would.

Q. Didn't you feel under any obligation to Mr. Robnett at all? A. I did not.

Q. Not from your agreement with him that you had had?

A. I hadn't thought about selling it before at all.

Q. You were taking it up to sell, weren't you?

A. Yes, sir.

Q. Did you feel that you had no obligation to Mr. Robnett whatever, that you could sell it to whom-ever you wanted to, whenever you got ready?

A. I never thought about it at all.

Q. Were you very well acquainted with Mr. Robnett at that time? A. Yes, sir.

(Testimony of Bertsel H. Ferris.)

Q. Had you ever borrowed any money from him?

A. No, sir.

Q. Had you ever had any business transactions with him? A. None at all.

Q. And he came to you and solicited you to take up a claim, as I understand? A. Yes, sir.

Mr. TANNAHILL.—We object to that as leading and suggestive.

Mr. GORDON.—Q. And told you he would furnish the money to you?

A. Yes, sir.

Mr. TANNAHILL.—We object to that. He didn't testify that Robnett told him he would furnish the money for him. [796—466]

Mr. GORDON.—Q. And he was to sell it for you?

A. Yes, sir.

Q. And you felt, in the face of all that, that you weren't under any obligation to him?

A. I never thought about it, Mr. Gordon.

Q. Would you have thought it right to sell to anybody but Mr. Robnett?

A. I probably wouldn't, if I had thought about it; I probably would have given him the preference.

Mr. GORDON.—That is all.

At this time a recess was taken until two o'clock.
[797—467]

At two o'clock P. M. the hearing was resumed.

[**Testimony of Hiram F. Lewis, for Complainant.**]

HIRAM F. LEWIS, a witness called in behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Hiram F. Lewis?

A. Yes, sir.

Q. Where do you reside, Mr. Lewis?

A. Lewiston, Idaho.

Q. How long have you resided at Lewiston?

A. About nine years.

Q. Do you remember of taking up a claim under the timber and stone act? A. Yes, sir.

Q. What year?

A. I forget now—I think it was in 1904.

Q. Well, were you married at the time?

A. Yes, sir, I had been; my wife is dead, though.

Q. Were you married at that time, I say?

A. Yes, sir—before that; my wife was dead at that time.

Q. And of what did your family consist?

A. Myself and my mother and two children.

Q. And how were you employed at that time?

A. I was working for the city of Lewiston.

Q. The city of what?

A. The city of Lewiston.

Q. In what capacity?

A. Assistant city engineer.

Q. And what was your salary? A. \$70.00.

Q. \$70.00 a month? [798—468] A. Yes, sir.

(Testimony of Hiram F. Lewis.)

Q. And by whom had you been employed just previous to that?

A. Well, I had been working for the city of Lewiston ever since I came here up to that time.

Q. Who are you working for now?

A. The Lewiston Gas Company, or the Pacific Power & Light Company.

Q. Well, weren't you employed by Naylor & Norlin at one time? A. Yes, sir.

Q. When was that?

A. Well, that was about that time too. I worked for them on a sewer contract.

Q. How do you mean you worked for them on a contract? A. Well, I was foreman for them.

Q. Did you know Mr. George H. Kester?

A. Yes, sir.

Q. And was he connected with Naylor & Norlin?

A. Not to my knowledge, at that time.

Q. Is he now, or was he afterwards?

A. Yes, sir.

Q. In what capacity?

A. He bought out Charles Norlin.

Q. Then it was the firm of Norlin & Kester?

A. No, sir—Naylor & Kester.

Q. Who spoke to you first about taking up a timber claim?

Mr. TANNAHILL.—We object to the evidence of the witness relative to taking up a timber claim, upon the ground that it is irrelevant, incompetent and immaterial, the claim of the witness not being involved in either of these present actions.

(Testimony of Hiram F. Lewis.)

Mr. GORDON.—Answer the question, please.

A. Why, in regard to taking up a claim?

Q. Yes, sir. [799—469]

A. Why, John Nickerson and Robnett were the first parties that spoke to me about taking up a claim.

Q. Did Mr. William Dwyer solicit you to take up a claim? A. No, sir.

Q. Well, what did Mr. Robnett say to you?

A. Well, at that time Robnett and Nickerson were in the timber business up on the Lolo, and they wanted me to go up there and take a claim. I went up and looked at the timber and didn't like it and didn't take any. Afterwards I came back and met Mr. Dwyer one day and asked him if he had any timber.

Q. Did you ask Mr. Dwyer, or did Mr. Dwyer ask you? A. I asked Mr. Dwyer.

Q. You have testified at several trials before, haven't you, Mr. Lewis? A. Yes, sir.

Q. And you had your faculties with you when you were testifying, did you not.

A. I guess part of them.

Q. The same as you have now?

A. Well, I don't know. The first time I testified, when Mr. Ruick was up there, why they had me in the sweat-box up there, and Mr. Ruick threatened impeachment if I didn't come out and tell things just to suit him; and there were certain things that I told Mr. Ruick and Mr. Johnson, and whenever I

(Testimony of Hiram F. Lewis.)

said anything if it didn't suit them they would cut it out.

Q. Now, but how was it when you went into the trial of the case of Kester, Kettenbach and Dwyer, before Judge Dietrich, in the spring of 1907; did you know what you were testifying to then?

A. Well, they had my testimony just as I had given it in to Mr. Ruick.

Q. I know; but I am asking about the testimony you gave in court; did you tell the truth then?
[800—470]

A. Yes, I guess I did. I don't remember just what I said.

Q. Well, do you guess, or don't you know whether you told the truth or not?

A. Well, I always figure on telling the truth.

Q. Do you remember this question being asked you at the trial of Kester, Kettenbach and Dwyer, referred to in the stipulation made by counsel in these cases as No. 1605 of the Circuit Court of Appeals record, in the trial before the trial jury at Moscow: "Now state, Mr. Lewis, what led you to file this application or sworn statement in the land office. What led up to your application for a timber claim?" "Answer. Shortly after I became acquainted with Mr. Dwyer he asked me one day if I had used my stone and timber right. I told him I had not. He wanted to know if I wanted to take up a claim, and I told him I didn't know. He told me they had some good claims, and if I hadn't used my right that he could locate a claim for me, and he

(Testimony of Hiram F. Lewis.)

afterwards did." Do you remember that question being asked you, and that answer being give by you?

A. Well, that was prior to the time that I went up there with Robnett.

Q. Now, I am asking you, do you remember that question being asked, and that answer being given by you? A. No, sir, I don't.

Q. Well, was that answer to that question correct?

A. I think it was, yes, at that time.

Q. Now, when was this you had this talk with Dwyer?

A. I think that was prior to the time—I know it was—it was prior to the time I went up with Robnett up on the Lolo.

Q. Now, what did Mr. Dwyer say to you in this conversation which you had?

A. Well, I couldn't tell you just what he did say just now.

Q. Well, tell us as near as you can remember.

A. I think I asked him about the claims, and he told me that they [801—471] had some good claims up there, and if I wanted to take one I could make a little money out of it.

Q. Is that the way he expressed it?

A. I think so.

Q. Did he tell you what he would give you for your right for your claim? A. No, sir.

Q. Are you sure of that? A. Yes, sir.

Q. Do you remember, at the same trial that I have referred to a few moments ago, of this question being asked you, or these questions being asked you, and

(Testimony of Hiram F. Lewis.)

of these answers being given to you: "Did you have any further conversation with Dwyer, or with anybody else, prior to your filing the application?"

"Answer. Yes, sir." "Question. With whom did you have that conversation?" "Answer. Mr.

Dwyer." "Question. Where did you have that conversation?"

"Answer. I think it was at my home East of Lewiston, or near my home East of Lewiston." "Question. State the conversation."

"Answer. He came up there one evening and told me they had some claims, and that he would go up and show me one and I could file on it, and also what they would give me for my right—for my claim."

"Question. What did he say he would give you for your right?" "Answer. \$150.00."

A. No, sir—he never said any such a thing.

Q. Didn't you swear to that at that trial?

A. I don't think I ever said that, no, sir.

Q. Will you say that you didn't say it?

A. I don't think I said he would give me \$150.00, because I got more than that.

Q. How much did you get? A. I got \$250.00.

Q. Do you remember these questions being asked you and these answers being made by you?
[802—472]

A. Yes, sir, I think I do.

Q. I show you an affidavit, Mr. Lewis, subscribed and sworn to by Hiram F. Lewis November 1st, 1905, before Francis M. Goodwin, and ask you if that is your name—if that is your signature to the affidavit? I ask you to look at the signature first, and then you

(Testimony of Hiram F. Lewis.)

can read it. Is that your signature? (Exhibiting same to witness.) A. Yes, sir.

Q. And did you swear to that before Mr. Goodwin?

A. I think I must have, yes, sir.

Q. Well, don't you know? I am not asking what you think—don't you know? A. Yes, sir.

Q. Were you telling the truth when you made that statement?

Mr. TANNAHILL.—We object to that. The witness has a right to read the statement before he makes any such an answer.

Mr. GORDON.—Answer the question: Were you telling the truth when you swore to that statement?

A. Well, I don't remember whether I read that over or not. I remember I signed it.

Q. Well, I am not asking you whether the statements contained in there are true; I am asking you whether you told the truth when you made that statement?

Mr. TANNAHILL.—We insist on the witness reading the statement before he answers the question. The witness can refuse to answer until after he reads the statement over.

The SPECIAL EXAMINER.—I don't think he is asking him the contents of it.

Mr. GORDON.—I am asking him if he swore to the truth when he made that affidavit.

Mr. TANNAHILL.—If the Court please, he don't know whether he did or not if he don't know what the contents of the paper was.

(Testimony of Hiram F. Lewis.)

WITNESS.—That is my signature all right.

[803—473]

Mr. GORDON.—And you were telling the truth?

A. Well, I don't know as to the contents.

Q. Did you intend to swear to an untruth?

A. No, sir.

Q. Then, if this is the paper you signed you swore to the truth?

Mr. TANNAHILL.—We object to that. The witness has a right to read the statement before he answers the question.

Mr. GORDON.—Answer the question.

Mr. TANNAHILL.—Well, we object to that. The witness has a right to read the statement before he answers the question.

Mr. GORDON.—Let him decline to answer it, then.

Q. Do you decline to answer the question?

A. No, sir.

Q. Well, then, answer the question.

Mr. TANNAHILL.—Well, I will take the liberty of instructing the witness that he can refuse to answer the question until he reads the statement.

Mr. GORDON.—I am very glad that counsel for the defendants has put himself on record as instructing the Government's witnesses.

Q. Now, read the affidavit, and tell whether that is the truth or not. (Handing said affidavit to the witness, who read the same.)

A. I don't know that I ever read that before. I am pretty sure I never.

(Testimony of Hiram F. Lewis.)

Q. You signed it, didn't you? A. Yes, sir.

Q. And were you given an opportunity to read it over?

A. I don't remember whether I was or not.

Q. Where was this affidavit taken? At your home? A. No, sir.

Q. Where was it?

A. I couldn't tell you whether it was in Moscow or whether it [804—474] was in Lewiston.

Q. Do you know who was present besides Mr. Goodwin at that time?

A. No, I don't. I don't remember.

Q. Now, did you read in this affidavit which you have identified that Mr. Dwyer induced you to take up a timber claim? A. No, sir, he didn't.

Q. I asked you did you read that?

A. I did just now, yes, sir.

Q. Well, I will ask you whether or not that is true?

A. No, sir; he never induced me to take up a claim.

Q. Then, what was said in there wasn't true?

A. Not at that time.

Q. You swore to it, however, though?

A. There are other parts in there that isn't true either.

Q. Do you remember this question being asked you in that affidavit which you swore to: "Just tell the conversation that took place between you and Mr. Dwyer in regard to this claim." "Answer. He told me that he had a good claim for me; it was a homestead relinquishment, and that if I wanted to take a claim he would take me up there and show it to me.

(Testimony of Hiram F. Lewis.)

He said he would let me know just what time we could go, and a few days after we went and looked at the claim, and came back and I filed on it." Do you know whether or not that conversation took place? A. Yes, sir.

Q. That is correct, is it? A. Yes, sir.

Q. Do you remember this question being asked you at that time: "Question. He took you on what he said was a claim?" "Answer. I know it was the claim all right. I have surveyed a good deal myself, and I went to the corner stakes. They made a proposition to give me \$150.00."

A. No, sir, that isn't right. [805—475]

Q. You swore to it, however, though, didn't you?

A. Well, I signed a paper, but I say I don't believe I ever read that paper over.

Q. Well, will you say you didn't read it over?

A. Well, no. It is so long ago I don't remember whether I did or not.

Q. You say you won't be positive whether you did read it over?

A. No, sir, I won't say whether I did or didn't at the time. I don't remember, but I know that I never agreed to take no \$150.00; I will swear to that.

Q. Now, that was in November, 1905, and this record that I read to you from is 1605, and now you say you have no remembrance of that? That was in the spring of 1907. Will you say that that wasn't true, either, or that you were not correctly reported there?

A. 1907? Where was that? In Moscow?

(Testimony of Hiram F. Lewis.)

Q. Yes, at Moscow? A. Read that back.

Q. "State that conversation"—and what I read before and the context will show that it was a conversation with Mr. Dwyer—"State the conversation." "Answer. He came there one evening and told me they had some claims, and that he would go up and show me one and I could file on it, and also what they would give me for my right—for my claim." "Question. What did he say he would give you for your right?" "Answer. \$150.00." Now, I ask you whether or not you remember those questions being asked, and that answer being made by you? A. No, sir.

Q. You say you don't remember them?

A. No, sir.

Q. I will ask you whether or not if you made that statement whether it was true?

A. No, sir, it wasn't true; I never offered to take that for the [806—476] claim.

Q. How long have you been under subpoena, Mr. Lewis? A. Since about last Tuesday.

Q. Last Tuesday? A. Yes, sir, I think so.

Q. And how many times have you been with Mr. Dwyer since last Tuesday? A. Only once.

Q. When was that?

A. The other night when you saw me down on the street was all.

Q. Night before last? A. Yes, sir.

Q. That is the only time?

A. That is the only time.

Q. You have never stopped to talk to him on the

(Testimony of Hiram F. Lewis.)

street at any other time? A. No, sir.

Q. Nor any of the other defendants?

A. No, sir.

Q. Have you seen a copy of this record since you testified before? A. No, sir.

Q. Nowhere? A. No, sir.

Q. Are you sure of that? A. Yes, sir.

Q. Did you and Mr. Dwyer discuss this matter?

A. No, sir.

Q. Never mentioned the case?

A. Not since we was at Boise last spring.

Q. Do you remember testifying at the trial of William Dwyer at Moscow, in October and November of 1906? [807—477]

A. Yes, sir, I do.

Q. You remember testifying at that trial?

A. Yes, sir.

Q. I read from your testimony given at that trial, and the record is No. 1606, referred to in the stipulation made between the various parties to these suits at the beginning of the hearing, at page 282 of said record. Do you remember this question being asked you: "How did the subject of your taking up a timber claim come up, Mr. Lewis?" And was this answer made by you: "Answer. Why, I think I met Mr. Dwyer one day and he asked me in the first place if I ever had used my timber right, and I told him I had not, and he said they had some good claims, and wanted to know if I wanted to take one." Do you remember whether that question was asked and whether that answer was made by you?

(Testimony of Hiram F. Lewis.)

A. I think it was; yes, sir.

Q. That is correct, is it? A. Yes, sir.

Q. Do you remember this question being asked, and the answer which I shall read being made by you:

“Question. Well, go on and state what further occurred?” “Answer. And he said he would take me

up and show me one, which he afterwards did, and I came back and filed on it.” “Question. Did you,

before filing, have any talk with Mr. Dwyer concerning the terms on which you would take up this timber

claim? “Answer. Yes, sir.” “Question. What was stated by Mr. Dwyer concerning it? What was the

agreement, if any, made between you and Mr. Dwyer?” “Answer. In regard to taking up the

claim, Mr. Ruick?” “Question. Yes; on what conditions and terms were you to take the claim?”

“Answer. Why, I think he asked me if I had any money of my own, and I told him I had some, and he

said that was all right, and they would furnish me the balance, which was done.” Do you remember

those questions being asked and those answers being given by you? A. Yes, sir.

Q. And they are the truth? The answers are true?
[808—478]

A. I think they are.

Q. Don't you know that they are?

(No answer.)

Q. Answer the question.

A. Yes, I think they are true.

(Testimony of Hiram F. Lewis.)

Q. The next question: "Well, what I want is, what did Mr. Dwyer state further, if anything, concerning this? Was there anything said or agreed upon between you there as to what disposition was to be made of the claim when you got title to it?" "Answer. Yes, sir." "Question. How much was there to be in it for you?" "Answer. They agreed to give me \$150.00."

A. I don't see how that could be, that \$150.00 there, because I never agreed to take that price.

Q. Now, I will ask you if you remember those questions being asked you, and those answers being made by you?

A. I never answered to the \$150.00 proposition; I know that. If I did I didn't intend to at the time.

The SPECIAL EXAMINER.—Counsel asked you if you remember about the questions being asked you, and the answers. That is the first thing; and then, of course, you might explain whether they are true or not.

WITNESS.—Well, yes, sir.

Mr. GORDON.—Q. You say you think those questions were asked and those answers given?

A. Yes, sir.

Q. Now, were they true, and are they true—those answers?

A. No, they are not true, not all of them.

Q. Now, the next question: "It is not what they agreed to do; what did Dwyer say to you? State the agreement—state what was said." "Answer. I was

(Testimony of Hiram F. Lewis.)

to go up and take up a claim and then when it was turned over to them why I was to receive \$150.00 for my right." [809—479] "Question. With whom did you have that understanding?" "Answer. I think it was Mr. Dwyer." Was that question asked you at the trial of Mr. Dwyer I have referred to, and were those answers made by you at that time?

A. Yes, sir.

Q. And were they true? A. No, sir.

Q. Did you swear falsely in them intentionally?

A. No, sir.

Q. What was the matter with you that you didn't tell the truth then?

A. Well, like I have told you here before: I was intimidated all the way through.

Q. You were intimidated? A. Yes, sir.

Q. How old are you, Mr. Lewis?

A. 37—38 now.

Q. And have you lived in Idaho all these years?

A. No, sir.

Q. Where did you come from? A. Minnesota.

Q. Minnesota? A. Yes, sir.

Q. You have been in Idaho how many years?

A. About eight years—a little over—nine.

Q. And you are an educated man?

A. Yes, sir.

Q. And, as I understand, a civil engineer?

A. Yes, sir. I am not a graduate engineer.

Q. And you were threatened?

A. Well, they had me in the sweat-box up there,

(Testimony of Hiram F. Lewis.)

and told me what they would do with me. [810—480]

Q. Now, I have heard a great deal about that sweat--box, and would like to know what you mean by that.

A. Mr. Ruick, as I say, if I would tell anything that suited his side of the case it was all right, and when I didn't he would say to cut it out.

Q. Well, he didn't say that in these trials in court, did he?

A. No; but he took them down at that time when I was in the sweat-box, and then they used it right along through.

Q. And you felt that you had to say that you had an agreement to sell your right for \$150.00 because you were threatened; is that right?

A. I never agreed to sell it for \$150.00.

Q. No—I say, you said it then?

A. Well, yes, the question is there; but I never agreed to it.

Q. Did you tell them that, as I understand?

A. Mr. Ruick, yes.

Q. And you told it twice in court?

A. No, I never told them that; I never told anybody.

Q. You testified to it in court twice, didn't you?

A. I never knew it was down there at \$150.00. I never agreed to sell at that.

Q. Well, what was the price you agreed to sell it for?

(Testimony of Hiram F. Lewis.)

A. Well, after about two years I sold it and made about \$200.00 out of it. I paid taxes on it for two years.

Q. Following along, reading from the same case, I will ask you if this question was asked and this answer made: "Mr. Lewis, kindly avoid using 'I think' when you are perfectly clear, and save me from repeating the question—asking it over again. Did you receive this \$150.00 pursuant to this agreement?" "Answer. Yes, sir." "Question. From whom?" "Answer. From Mr. Kester, is my memory." Do you remember those questions being asked you and those answers made by you?

A. I don't remember as I ever received \$150.00 from Kester.

Q. Well, now, let me ask you, do you remember those questions [811—481] being asked you, and those answers being made at that time?

A. Yes, sir.

Q. And were they true? A. No, sir.

Q. And how much did you receive from Mr. Kester? A. Altogether?

Q. With reference to this claim? A. \$250.00.

Q. \$250.00? A. Yes, sir.

Q. Do you remember before you filed your sworn statement, or the first paper you filed in the land office, of discussing with Mr. Dwyer the propriety of making such a statement? A. No, sir, I don't.

Q. You don't know whether you did or not?

A. No, sir.

(Testimony of Hiram F. Lewis.)

Q. Do you remember whether you and Mr. Dwyer, before you filed your sworn statement, discussed whether or not you should swear that you were taking it up for your own use, and not for the use or benefit of anybody else?

A. I don't remember that he suggested anything of the kind.

Q. Are you sure he didn't? A. Yes, sir.

Q. Now, did you visit the timber claim which you afterwards made application to enter?

A. Yes, sir.

Q. With whom? A. Mr. Dwyer.

Q. And then you came down and filed?

A. Yes, sir.

Q. I will ask you this, reading from the same case at page 284: "Now, between the time that you made this agreement with Dwyer which [812—482] you have testified to and the time that you filed this sworn statement in the land office did you visit the timber?" "Answer. Yes, sir." "Question. In whose company?" "Answer. Mr. Dwyer's." "Question. Anyone else?" "Answer. Well, I think Mr. Bliss went up there, but he didn't go into the land; that is, at that time." Do you remember those questions being asked, and those answers being made by you?

A. Yes, sir.

Q. Now, the next question: "When, if at all, before you filed this written sworn statement that has been shown you, did you and Mr. Dwyer discuss the requirements of this statement—things that you would have to state in the land office?" "Answer.

(Testimony of Hiram F. Lewis.)

I think we did, yes, sir.” “Question. Where was this discussion had?” “Answer. On the streets in Lewiston.” Do you remember those questions being asked, and that answer being made by you?

A. Please read that last again.

The stenographer repeated the last question.

A. I think I do.

Q. Now, do you remember whether or not Mr. Dwyer went over the statement that you had to swear to when you filed your sworn statement, as to what you should say when you swore that you were taking up the land for your own use and benefit? Do you remember discussing that with him?

A. No, sir, I don't.

Q. Reading from the same case at page 285, I will ask you if the question which I shall read to you was asked, and whether the answer which I will also read was made by you: “Well, now, I will ask you this question, to refresh your recollection: Didn't you read over this statement in the land office before you answered it, or before you filed it?” “Answer. Yes, sir.” “Question. Did you observe this statement in here speaks that ‘I didn't apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit?’” Did you notice that?” “Answer. Yes, sir.”

[813—483] Now, do you remember those questions being asked you, and those answers being made by you? A. That I read over the statement?

Q. No, but the whole question that I have been reading to you, and the answer. A. Yes, sir.

(Testimony of Hiram F. Lewis.)

Q. Those questions were asked at this trial that I referred to? A. Yes, sir.

Q. And the answer that I have read made?

A. Yes, sir.

Q. By you? A. I think so.

Q. Were they true? Were the answers made, true? A. I think they were.

Q. Now, this question: I will ask you if this question was asked you, and whether you made the answer that I shall read: "And you swore to that, didn't you?" "Answer. Yes, sir." "Question. Was that statement when you made it true or false?" "Answer. It was false." Do you remember those questions being asked you, and those answers made by you?

A. No, sir, I don't recall it just now that way.

Q. Will you say they were not asked you?

A. No, sir, I don't believe they was.

Q. You have no recollection of it?

A. No, sir, I don't remember now the question being read that way.

Q. Well, was the statement made, that you were entering it in good faith, for your own exclusive use and benefit, true or false?

A. Well, I made it for my own benefit.

Q. Well, I asked you whether the statement that nobody else had any interest in it, I will ask you whether that was true or false?

A. No, sir, nobody else had any interest in it.

Q. Well, then, if you made this statement that I have read to [814—484] you in the trial of Mr.

(Testimony of Hiram F. Lewis.)

Dwyer, you didn't tell the truth; is that correct?

A. I made it for my own benefit and took the claim for my own benefit; I didn't take it for anybody else.

Q. That is not the question. The question is, was this question asked you, and was the answer which I shall read made by you: "Did you observe this statement in here speaks (referring to your sworn statement) that 'I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit?' Did you notice that statement?" "Answer. Yes, sir." "Question. And you swore to that, didn't you?" "Answer. Yes, sir." "Question. And was that statement when you made it true or false?" "Answer. It was false." I ask you again were those questions asked you, and were those answers made by you? A. Yes, sir.

Q. Did you tell the truth at that time when you testified at the trial of Mr. Dwyer concerning that matter that I have referred to just now?

A. I answer this just like I did the others: I had to answer them just like they wanted me to.

The SPECIAL EXAMINER.—Well, the question is whether you told the truth or not. You can answer that, I think, by yes or no.

WITNESS.—Yes, sir, I think I did.

Mr. GORDON.—Q. The next question, I will ask you whether this question was asked you at the trial referred to, and was the answer which I shall read made by you: "Question. And this other statement, 'that I have not, directly or indirectly, made any

(Testimony of Hiram F. Lewis.)

agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself,' you remember of having read that statement?" "Answer. Yes, sir." "Question. [815—485] Now, that statement was not true, was it, at the time that you swore to it?" "Answer. No, sir." "Question. You knew at the time that it wasn't true?" "Answer. Yes, sir." Do you remember those questions being asked you, and those answers made by you?

A. I do.

Q. And did you tell the truth when you made those answers? A. No, sir.

Q. Did you deliberately tell an untruth?

A. Well, no, sir. That was just because they told me that I had to do it that way.

Q. Now, tell us about this. Who told you that you had to? A. N. M. Ruick.

Q. N. M. Ruick? A. Yes, sir.

Q. Did anybody else tell you that you had to?

A. Well, Miles Johnson.

Q. Well, were they together when they told you that? A. Yes, sir.

Q. Was Mr. Goodwin present when they told you that? A. No, sir, I don't believe he was.

Q. Was Mr. O'Fallon?

A. No, sir, I don't believe Mr. O'Fallon was present at the time.

Q. Now, when did they tell you that?

(Testimony of Hiram F. Lewis.)

A. Well, two or three different times.

Q. Well, now, state the date or the occasion?

A. Well, at Moscow,—I don't remember the date exactly—twice in Moscow and once down here in Johnson's office.

Q. And was that before this trial?

A. Yes, sir, one time before that trial.

Q. And were you indicted? A. No, sir.

Q. And what did they tell you they would do to you if you did [816—486] tell an untruth?

A. Well, they told me they would indict me, and also impeach me, too.

Q. And you then went there and swore falsely to keep from being impeached and indicted; is that correct? A. Yes, sir.

Q. And after the first trial—or the trial at Moscow of Mr. Dwyer, in 1906, did you testify at the trial of Mr. Robnett? A. No, sir.

Q. Now, was any other conversation or threat made to you by either Mr. Ruick or Mr. Johnson, or anyone else, between then and the spring of 1907, when you testified at Moscow at the trial against Kester, Kettenbach and Dwyer, for conspiracy?

A. 1906, wasn't it?

Mr. GORDON.—No; it was the spring of 1907. (To Mr. Tannahill.) Is that right?

Mr. TANNAHILL.—Yes; May, 1907, is when Kester, Kettenbach and Dwyer were tried. Robnett was tried in the fall of 1906.

Mr. GORDON.—Q. Now, I will ask you if you remember being at the trial, as a witness on behalf of the Government, in the case of the United States vs.

(Testimony of Hiram F. Lewis.)

Kester, Kettenbach and Dwyer, charged with conspiracy, in the spring—May and June—of 1907?

A. Yes, sir, I was there.

Q. Were you in the sweat-box again?

A. Yes, sir.

Q. And did they have to threaten you again?

A. Well, they did every time I was in the sweat-box at Moscow.

Q. You tried to back out of your former statements each time, did you?

A. No, sir, I didn't try to back out of anything, but when I would tell them things that didn't suit him they would threaten me. [817—487]

Q. Do you mean when you told things that were not true that they told you if you didn't tell the truth that they would indict you?

A. Mr. Ruick said he knew I was holding back certain evidence that I wouldn't tell them, and if I didn't come out and tell them that he would impeach me.

Q. Did he say he would impeach you?

A. Yes, sir.

Q. That was his expression? A. I think it was.

Q. And was Mr. Johnson present at this second conversation?

A. I don't know whether Mr. Johnson was there or not.

Q. Well, I am asking you.

A. I couldn't tell you positively whether he was or not.

Q. And he told you at that time that he would impeach you? A. Yes, sir.

(Testimony of Hiram F. Lewis.)

Q. And then you went into court the second time and made similar statements to those that you made at the trial of Dwyer, when he was tried the preceding fall? A. Yes, sir.

Q. And you knew you were not telling the truth when you made those statements? A. Yes, sir.

Q. Now, in 1905, when you made this affidavit for Mr. Goodwin, did he also threaten you?

A. No, sir, I don't think he did.

Q. And did you tell the truth in that affidavit, as reported here?

A. I don't think I ever read that affidavit all over.

Q. Was it handed to you to read?

A. I think it was, but I didn't read it all at the time. I know I didn't now.

Q. Now, how is it that you will have us to understand that [818—488] three different times, going over a period of two years and a half, that you made statements in court and out of court that we have referred to in this affidavit, because you were threatened that if you didn't come out and tell what you knew about these things you would be indicted?

A. Yes, sir.

Q. Did they ask you to tell anything that wasn't true?

A. Why, no, sir, I don't know as they did. They thought I was holding back certain evidence, that I wouldn't tell it.

Q. Yes, and they told you that if you didn't tell all that you knew about it, that they would indict you; is that it?

(Testimony of Hiram F. Lewis.)

A. Yes; and when there was other things I had told him he would say, "We don't want that, and we will have that cut out."

Q. But they didn't say that to you in court, did they? A. No, sir.

Q. And it was some irrelevant matters or matters that didn't pertain to it that they cut out?

A. Well, there were certain things that they had in there that I told them that every time it was different I was threatened.

Q. Now, why is it that you have so much courage now that you can make these statements that you make here? Are you afraid of being indicted now if you don't tell the truth?

A. I don't know whether I am or not.

Q. I ask you, are you exercised over the fact now that you might be indicted if you don't tell the truth?

A. Well, I always figure on telling the truth.

Q. Did you tell the truth then, when you testified at Moscow?

Mr. TANNAHILL.—Oh, we object to that as a repetition. That has been gone over seven or eight different times.

Mr. GORDON.—Q. Well, what were you figuring on doing then? A. When? [819—489]

Q. At both trials at Moscow that you have referred to?

A. Well, I supposed I had to do just as they wanted me to.

Q. Now, you were cross-examined by counsel for these defendants in both of those trials, weren't you?

(Testimony of Hiram F. Lewis.)

A. I couldn't tell. I guess I was, though.

Q. And you reiterated the same statements, didn't you? A. Part of them, I guess.

Q. Now, you obtained a relinquishment from Mr. Dwyer before entering this claim? A. Yes, sir.

Q. And it was turned over to you, and you filed at the land office at the time you made your application to enter the land? A. Yes, sir.

Q. And did you pay anything for that relinquishment? A. Yes, sir.

Q. How much? A. \$50.00.

Q. Fifty dollars? A. Yes, sir.

Q. Did you pay any location fee? A. Yes, sir.

Q. To whom? A. Mr. Dwyer.

Q. When did you pay that?

A. After I took the claim.

Q. How long after you took the claim?

A. I should judge about three weeks, I think.

Q. When did you pay the \$50.00 that you have referred to? A. That was before I filed.

Q. Now, who paid your filing fees at the land office? A. I paid them myself.

Q. And who paid your expenses up to view the timber? [820—490] A. I did.

Q. How long after you viewed this timber did you locate or did you file your application?

A. Well, I think it was three or four days after I came back; something like that; I don't remember just the date.

Q. You made your filing—you filed your sworn statement and your other entry papers on the 29th of

(Testimony of Hiram F. Lewis.)

August, 1904, to the northwest quarter of section 20, in township 38 north, of range 5 east, Boise meridian; is that correct, Mr. Lewis?

A. Yes, sir, I think so.

Q. Now, had you any arrangement with anyone by which you got money to make your final proof?

A. Well, I had money of my own.

Q. How much did you have?

A. About \$300.00 or \$400.00 at that time.

Q. And did you use your own money?

A. Part of it.

Q. How much of your own money did you use?

A. Well, most all of it.

Q. Well, now, tell us how much, if you can?

A. Well, I drew—got some more, and gave my notes for it.

Q. How much did you get?

A. Well, I couldn't tell you just now how much it was.

Q. As near as you can tell.

A. Well, I think at that time about \$200.00, if I am not mistaken.

Q. And from whom did you get that?

A. Mr. Kester.

Q. Mr. George H. Kester? A. Yes, sir.

Q. And who made the arrangements for you to get it? A. I made them myself. [821—491]

Q. And when did you make them?

A. Well, I don't remember the date; it was that fall, though. I went to Mr. Kester and told him I didn't have money enough to prove up on that claim,

(Testimony of Hiram F. Lewis.)

and I asked him if I could borrow some money of him, and I gave him notes for it.

Q. Was Mr. Dwyer with you at that time?

A. No, sir.

Q. Was Mr. Dwyer with you at any time when you were talking about this timber claim?

A. Yes, sir.

Q. Sir? A. Yes, sir.

Q. When?

A. The first time that he talked with me about it?

Q. Well, the first conversation with him in regard to taking the claim.

A. He wasn't with me when I went to borrow any money.

Q. Well, I mean was Kester and Dwyer with you together the first time you talked about taking up a claim? A. No, sir.

Q. Now, when were Kester and Dwyer together when you talked about this claim?

A. Well, I don't recall just when that was. I think I met the two on the street one day and talked about it.

Q. And when was that?

A. Well, that fall, I think after I took the claim; probably October some time.

Q. Now, you have referred to "they." Who did you mean by "they?"

A. Mr. Kester and Mr. Dwyer.

Q. Now, again taking up this affidavit that you have identified as having been sworn to by you, or a number of questions and answers that have been identified as having been sworn to by you, which you

(Testimony of Hiram F. Lewis.)

have [822—492] read over since you have been on the witness chair, have you not?

A. Yes, sir, I have read them over.

Q. I will ask you if this question was asked, and the answer which I shall read made by you: "In other words, they told you that if you would go up and file on that timber claim and transfer it to them, they would give you \$150.00 for it?" "Answer. Yes, sir." I will ask you if you remember, first whether that question was asked you by Mr. O'Fallon, and next whether or not you remember making that answer.

A. I never made no answer to \$150.00.

Q. Now, I will ask you if you remember that question being asked and whether or not you made that answer.

A. I think it was.

Q. And did you make that answer?

A. I think so at that time, yes, sir.

Q. And the next question: "And they would advance the money and pay all the expenses?" "Answer. Yes, sir." Was the question asked, and was that answer made by you?

A. No, sir.

Q. I will ask you if you remember that question being asked, and whether that answer was made by you?

A. I don't remember it now.

Q. You don't remember it now?

A. No.

Q. You won't say that question wasn't asked and that answer wasn't made, will you?

A. Well, not positively.

Q. Now, who are the "they" referred to in there?

A. Mr. Kester and Mr. Dwyer.

(Testimony of Hiram F. Lewis.)

Q. That is, William Dwyer and George H. Kester?

A. Yes, sir.

Q. I shall read the next question: "Question. Go on and state [823—493] what you did when you came back?" "Answer. I think I told you that I filed on the claim." "Question. Who paid the land office fees?" "Answer. I paid them myself. I paid all my witness fees from this money, you know." "Question. They let you have the money for that purpose?" "Answer. Yes, sir. I got the money on a note, and deposited it in the Idaho Trust Company and drew on it for expenses." Do you remember whether those questions were asked you and those answers made by you?

A. Yes, sir. I just told you I borrowed money on a note. I borrowed it from the Idaho Trust Company. That's what it did.

Q. Now, that was before you filed on it?

A. No, it wasn't.

Q. Now, let's see if we can get this right: "Question. Go on and state what you did when you came back." That is, after you had been up to view the land. "Answer. I think I told you that I filed on the claim." "Question. Who paid the land office fees?" "Answer. I paid them myself. I paid all my witness fees from this money, you know." "Question. They let you have the money for that purpose?" "Answer. Yes, sir. I got the money on a note and deposited it in the Idaho Trust Company and drew on that for expenses." Now, were those questions asked you, and those answers made

(Testimony of Hiram F. Lewis.)

by you? A. Well, as I have just stated,—

Q. Answer my question, and then you can explain.

The SPECIAL EXAMINER.—Yes, answer the question, and then you can explain if you want to.

WITNESS.—No, sir.

Mr. GORDON.—Q. You say those questions were not asked you, and those answers were not made by you? A. No, sir, I don't remember them now.

Q. Well, is it a fact that they did give you the money, or loan you the money, to pay your filing fees and your expenses? [824—494] A. No, sir.

Q. That is not the truth, then? A. No, sir.

Q. That is not a fact? A. No, sir.

Q. You have a brother, have you not?

A. Yes, sir.

Q. What is his name? A. Edward M. Lewis.

Q. And I will ask you whether or not Mr. Dwyer at the same time he talked with you about taking up a claim asked if he could get your brother to take up a claim?

A. No, sir; it was subsequent—after I took up my claim.

Q. Then, did he ask you if you could get your brother to take up a claim?

A. He asked me if I had a brother, and said he had a claim up there and he could get one.

Q. Was that also a relinquishment?

A. Yes, sir.

Q. And did you get your brother to file on the claim? A. Yes, sir.

Q. Mr. Lewis, did you discuss with Mr. Dwyer,

(Testimony of Hiram F. Lewis.)

prior to making final proof, the questions that would be asked you in the land office?

Mr. TANNAHILL.—I object to that as irrelevant and immaterial.

WITNESS.—No, sir, I don't know that I did.

Mr. GORDON.—Q. Did he discuss them with you?

A. No, sir, I don't remember that he did.

Q. Do you remember whether that matter—those questions,—were asked you by Mr. Goodwin when he was taking your statement?

A. I think I had a copy of the papers and read them over before I made my final proof. [825—495]

Q. Who gave them to you?

A. I think Mr. Dwyer did, if I am not mistaken.

Q. Where did he give them to you?

A. In the Lewiston National Bank, or upstairs, I think it was, in Dwyer's office.

Q. Did he have an office in the Lewiston National Bank building? A. Yes, sir.

Q. Do you remember that in that conference or inquiry that was being made by Mr. Goodwin of you, and the paper which you have identified here, whether this question was asked you, and whether or not you made the answer which I shall read: "Mr. Lewis, did you have a talk with Mr. Dwyer or anyone else in reference to the questions that would be asked you in the land office before you proved up?"

"Answer. No. I don't believe that they questioned me at all, Mr. Johnson." "Question. In question No. 13, with regard to whether or not you had any agreement or contract of any kind, direct or indirect,

(Testimony of Hiram F. Lewis.)

with anybody, who is the man who suggested that you answer the question no?" "Answer. Mr. Dwyer did." Do you remember that question being asked, and that answer being made by you?

A. No, sir, I don't.

Q. Now, it seems that Mr. Johnson was present at the time when Mr. O'Fallon was taking this statement; is that correct?

A. Well, I had forgotten. I know Mr. Johnson was there most of the time; but I had forgotten whether Mr. Johnson was there all the time.

Q. Do you remember whether or not, at the time you made proof, you had given a note for this money that you had received from Mr. Kester to make your proof? A. Yes, sir, I think I had.

Q. Are you sure that you did? A. Yes, sir.
[826—496]

Q. See if this refreshes your memory: Again reading from this sworn statement that you have identified here, before Mr. Goodwin: "And Dwyer advised you to say when they came to that question (that you have just referred to before)?" "Answer. He told me like this, 'that money is your own money, and those questions you want to answer them no.' "

"Question. You hadn't given the note at that time?" "Answer. No, sir." Were those questions asked you, and were those answers made by you at that time? A. I think they were.

Q. "Question. At the time you made final proof you hadn't given the note?" "Answer. No; I think the note was given subsequent to that." Does

(Testimony of Hiram F. Lewis.)

that refresh your recollection at all?

A. I gave two notes, but I gave one before and one after.

Q. The next question "You didn't sign anything at all but the note?" "Answer. No, sir, nothing but the note. I had no contract or anything of that kind." "Question. What did they say? That they could trust you to carry out the proposition, and it wasn't necessary to have a mortgage or deed?"

"Answer. Yes, sir." "Question. Wasn't there something said to you that Mr. O'Fallon was in town at that time making an investigation, and it would be much better not to have any transfer until after this matter had blown over?" "Answer. I think, if I mistake not, it was Mr. Kester who said, 'We will just let this matter stand until some future time.' One idea he had suggested to me one day (which I never carried out) was that I go before a lawyer and have my brother's claim transferred to him."

"Question. George H. Kester told you that?"

"Answer. I think it was George H. Kester told me that." Do you remember those questions being asked, and those answers being made by you?

A. No, sir.

Q. Well, is it a fact as those answers would indicate?

A. I don't remember of any such conversation.

Q. Well, I ask you, was there a conversation at that time? [827—497]

A. Not to that effect, that I know of, no, sir.

Q. You say that there wasn't a conversation to

(Testimony of Hiram F. Lewis.)

that effect? A. Yes, sir.

Q. And that you didn't make the statements that you are reported to have made here? A. Yes, sir.

Q. Do you remember this question being asked you: "Did you have a talk with Kettenbach in reference to it?" "Answer. I don't think I did in regard to this transaction. I don't think I had anything to do with Kettenbach at all. It was generally through Dwyer and Kester." Do you remember those questions being asked? A. Yes, sir.

Q. And that answer made? A. I think I do.

Q. Do you remember this question being asked you: I am still reading from the same affidavit, or questions and answers which you have identified as having been signed and sworn to by you. "Now, Mr. Lewis, they also had you go around and see some other people to get them to file for \$150.00, didn't they?" "Answer. Mr. Dwyer suggested to me that if I knew anybody who wanted to take up a claim on that same arrangement, to send them around." "Question. And George H. Kester also had a talk with you on the same line?" "Answer. No, I don't think Mr. Kester did; it was Mr. Dwyer." Were those questions asked you, and that answer made by you? A. I think it was.

Q. That was true, was it?

A. I think so. I never got anybody to take claims, though, on that proposition.

Q. Wouldn't they come through?

A. Well, I never tried, I guess.

Q. The next question: "And you had an under-

(Testimony of Hiram F. Lewis.)

standing with Kester that this claim that you were taking up for him, you were to [828—498] receive \$150.00 and he was to have it?" "Answer. Yes, sir, at some future time. There was never any contract, or anything of that kind." "Question. You didn't have a written agreement or contract, I know, but you had a verbal understanding?" "Answer. Yes, sir." "Question. Did you and your brother receive your \$150.00?" "Answer. Yes, sir." Do you remember those questions being asked and those answers being made? A. No, sir.

Q. Would you say they were not asked, or don't you remember?

A. I don't remember them particularly.

Q. Your brother took up a claim, and do you remember whether or not there was a contest filed?

A. Yes, sir.

Q. And who paid the expense of that contest?

A. I did.

Q. And who reimbursed you for it?

A. Nobody.

Q. Are you sure of that? A. Yes, sir.

Q. In this same affidavit I have been reading to you, "I will ask you this, have you ever paid any interest on this note of yours which is now in the bank?"

A. I beg pardon, there was something; I remember that.

Q. Now, who reimbursed you for that?

A. Mr. Dwyer.

Q. Mr. Dwyer or Mr. Kester?

(Testimony of Hiram F. Lewis.)

A. I think it was Mr. Dwyer.

Q. See if this refreshes your memory: "Have you ever paid any interest on this note of yours which is now in the bank?" "Answer. Why, while I was away there was a contest on my brother's claim, and he went down and paid out \$30.00 out of his own pocket." "Question. At the land office?" "Answer. At the land office, on this contest, and [829—499] when I came back home Mr. Dwyer met me and told me that that money would be refunded, and that he would get it for me, and he stepped into the bank and I stopped to talk with somebody and then followed him in, in a few minutes, and Mr. Kester or Mr. Dwyer, I wouldn't say which, said that they would endorse this on the note as interest, which was done." "Question. By whom was that done?" "Answer. Mr. Kester endorsed it." Is that correct?

A. Yes, I think that's right.

Q. Then, Dwyer paid you the \$30.00 interest, is that right? You don't know whether it was Kester paid it or Dwyer paid it?

A. It was Kester.

Mr. GORDON.—Mr. Tannahill, this affidavit that there was such a to-do about the witness being allowed to see, I will turn it over to you to read. (Handing same to Mr. Tannahill.)

Q. Reading again from case No. 1605, heretofore referred to, at page 473, I will ask you whether or not the questions which I shall read were asked you, and whether you answered them, and see if they re-

(Testimony of Hiram F. Lewis.)

fresh your recollection to any extent: "Did you have a conversation prior to your filing your application at which any of the other defendants were present besides Dwyer?" "Answer. Why, Mr. Kester was with Mr. Dwyer one time, but I wouldn't say positively which time it was, whether it was the first or the second time that I met him." Do you remember whether or not that is the fact?

A. I think it was.

Q. That was before you filed, however?

A. Well, I couldn't tell positive whether it was before or afterwards.

Q. Now, see if this refreshes your recollection: Continuing on the same page, relating to the same occasion: "Question. Well, you may go ahead and state where you met him." "Answer. I think I was coming down town at the time from home and I met them; they were in a buggy, Mr. Dwyer and Mr. Kester." "Question. What conversation, if [830—500] any, did you have there, relative to your proposed timber filing?" "Answer. They wanted to know when I could go up, and I told them almost any time they would set a date. Mr. Dwyer said he would go up with me, and we did. We took the train to Lenoir, and then got horses and went out and saw the timber claim and came back to Lewiston." Do you remember those questions being asked at the trial I have referred to, and those answers being made by you?

A. I think they were.

Q. Continuing on page 474 of the same trial, I will

(Testimony of Hiram F. Lewis.)

ask you whether or not this question was asked you, and the answer which I shall read made by you: "Had there been any understanding between you and the defendant Dwyer, or Dwyer and the other defendants, or either of them, prior to your going up to this timber, as to the disposition you were to make of this claim when you should procure the title to it? Answer the question yes or no." "Answer. Yes." "Question. State what your understanding and agreement was, when and where it was made, and how? State everything in relation to it." "Answer. Well, I told them—they wanted, Mr. Dwyer wanted to know if I had any money of my own, and I told him I had. He wanted to know where it was. I told him it was in the Idaho Trust Company's Bank, and he said, as I stated, that I could take up a claim and they would pay all the expenses and they would furnish the balance of the money for me. I was to give my note for it, and would pay all of the expenses out of the money; that is, when I drew checks on it, on the Idaho Trust Company, for expenses. They procured the money from the Lewiston National Bank, and I gave my note for it, as I say, and deposited it in the Idaho Trust Company." Do you remember those questions being asked, and those answers made by you?

A. Yes, sir. But they didn't procure it; I procured the money myself.

Q. You procured it from the Lewiston National Bank? A. Yes, sir. [831—501]

Q. Through whom did you conduct the transac-

(Testimony of Hiram F. Lewis.)

tion? A. Mr. Kester.

Q. Well, then, there is no practical difference between the statement that you make now and the one that I have read to you?

A. No; no practical difference. It says "they" there, and Mr. Dwyer wasn't present at the time.

Q. Mr. Dwyer was present when you had the talk with Kester about getting the money, though, wasn't he? A. No, I don't think he was.

Q. I will ask you whether this question was asked you in the same connection, on page 475: "What I asked you in particular—you anticipate a little, Mr. Lewis, what I want to know particularly is the terms of the agreement; in other words, what was said in the conversation between you and Dwyer, start in at the first conversation and go through and then go on with the later conversation you had with him before going to the timber with him, or with him and Kester." "Answer. He told me what they would give me for the claim, allow me for my right, and they would furnish all money and pay all expenses, and I was to deposit the money in the Idaho Trust Company and draw upon it to defray all the necessary expenses, and all expenses on account of that filing and proving up on the claim." Now, do you remember whether or not those questions were asked you, and those answers made by you?

A. Well, they didn't furnish all the money.

Q. Now, answer my question, and then you can go into that later. A. No, sir.

Q. Do you remember that question being asked,

(Testimony of Hiram F. Lewis.)

and that answer being made by you?

A. No, sir, not just that way.

Q. You wouldn't say that you did not make that answer in response to that question, would you, Mr. Lewis?

A. Well, if I did I didn't understand the question.

Q. You understand it now, do you? [832—502]

A. Yes, sir.

Q. Now, what was the reason you didn't understand it then?

A. In regard to getting the money, because I had part of the money myself.

Q. Now, you understand, Mr. Lewis,—let me explain to you that I am reading from the record of the trial of Kester and Kettenbach and the trial of Dwyer, in which you were a witness, and this record that I read from was the record that was gotten up by counsel for these defendants after they were convicted, to take the case up on appeal, and I want you to be careful as to how you answer these questions. If you don't remember them, say so; but if you have no recollection of it don't say that the answers and questions were not asked you and the answers made by you. And so what is your answer now as to whether or not that question that I read last was asked you, and whether you made the answer that you are reported to have made? A. I think I did.

Q. Now, you say you didn't understand it?

A. No, sir.

(Testimony of Hiram F. Lewis.)

Q. What was there about it you didn't understand?

A. There was no prior agreement, no arrangement made for it, as I had part of the money myself in the Idaho Trust Company.

Q. And they were to furnish the balance?—you can put it either way—to furnish, or loan it, or give it to you. I don't want to haggle on a word.

A. I went to them and asked them if I could get the balance of the money there, and they said I could.

Q. Wasn't that arrangement made before you went up to see the claim? A. No, sir, I think not.

Q. Haven't you said so in two or three places in these various trials?

A. I don't think I have. [833—503]

Q. I am reading from the same record: "Question. At which of these conversations or at what conversation was Mr. Kester present, or have you already testified?" "Answer. I think it was the second time that I met them. "Question. Yes, what arrangement, if any, was made that time when you met, when he and Dwyer were together?" "Answer. That was the time I was to go upon the claim when I met Mr. Kester with him." Do you remember those questions being asked you, and those answers being made by you? A. I think I do.

Q. And that is correct, is it?

A. Yes, sir. I won't state positive whether it was before I met on the claim, or after.

Q. I read the next question: "Question. Who was present when the arrangement was made and

(Testimony of Hiram F. Lewis.)

you were to procure the money, when the arrangement by which you were to procure the money was made and agreed upon?" "Answer. Mr. Dwyer."

"Question. Who?" "Answer. Mr. Dwyer and Mr. Kester were together." "Question. What?"

"Answer. Mr. Dwyer and Mr. Kester." "Question. Were together?" "Answer. Yes, sir."

"Question. At the time the money matters were talked over?" "Answer. Yes, sir." Now, do you remember whether those questions were asked you, and those answers were made by you?

A. I don't remember whether they was or not.

Q. You wouldn't say they were not, though?

A. No, sir.

Q. Reading from the same record at page 476:

"Question. You went up, did you, to the timber?"

"Answer. Yes, sir." "Question. Who went with you?" "Answer Mr. Dwyer." "Question. How

did you travel, how did you go?" "Answer. We

went on the cars to Lenore and then procured horses

and went on the timber claim on horses and came

back to Lenore and then took the cars back to Lewiston."

"Question. Where is Lenore? What line of railroad? On the Clearwater Branch?" "An-

swer. Yes, sir; on the Clearwater Branch." "Ques-

tion. How far [834—504] did you have to travel on horses?" "Answer. It took us two days to get

into the timber and back from there." "Question.

Who paid the expenses of that trip?" "Answer.

Mr. Dwyer." "Question. Did he give you the

money or did he pay it out of his own pocket?"

(Testimony of Hiram F. Lewis.)

“Answer. He paid it out of his own pocket.”

“Question. You say you were gone two days from Lewiston?”

“Answer. Three days—no, four days from Lewiston; it took four days, one day out and one day we took the horses after we left the train and was gone two days and come back and we had to wait for the train,” etc. I will ask you if you remember those questions being asked you, and those answers made by you, at the trial of Mr. Kester, Mr. Kettenbach and Mr. Dwyer, in the spring of 1907?

A. Yes, sir. I don't remember just when it was.

Q. Well, you remember those questions and answers being asked and given? A. Yes, sir. [835—505]

Mr. GORDON.—Q. Mr. Lewis, did you form a part of or among the number of persons in front of the land office in the line-up? A. Yes, sir.

Q. How long was it after you made your visit to view this land that you filed at the land office?

A. I think three or four days, something like that.

Q. Do you remember whether it was three or four days, or about two weeks?

A. Well, I couldn't tell now. Possibly—

Q. You have forgotten? A. Yes, sir:

Q. Who prepared your filing papers for you?

A. I. N. Smith.

Q. Who told you to go to see him? A. Nobody.

Q. Do you remember whether this question was asked you at the trial of Kester and Kettenbach, No. 1605, from which I have been reading: “How did you happen to go to I. N. Smith's office?” “Answer.

(Testimony of Hiram F. Lewis.)

I asked Mr. Dwyer where we could have them made out and he suggested that I go there and have them made out." A. I don't remember.

Q. Does that refresh your recollection at all?

A. He might have suggested that, but I don't remember just now.

Q. Do you remember whether Mr. Dwyer gave you the blank to take to Mr. Smith's office?

A. No, sir; I do not.

Q. Did you pay Mr. Smith for making out those papers? A. Yes, sir.

Q. How much?

A. I forget now; I think it was \$6.00; if I remember, I think it was \$6.00.

Q. And you paid your filing fees yourself? [836—506] A. Yes, sir.

Q. And you drew the money from the Idaho Trust Company for that purpose? A. Yes, sir.

Q. And had you previously made your loan at the Lewiston National Bank and deposited it in the Idaho trust? A. Yes, sir; part of it.

Q. Well, I mean the part you have referred to all along as having borrowed from the bank through Mr. Kester. A. Yes, sir.

Q. That had already been deposited in the Idaho Trust Company when you made this filing that I have referred to? A. Yes, sir.

Q. Do you remember whether or not this question was asked you at the trial I have been referring to, page 479: "For what purpose did you get the money, if you remember?" "Answer. For filing purposes

(Testimony of Hiram F. Lewis.)

and the expenses of the claim.” “Question. Did you give any note or other obligation for it?” “Answer. Yes, sir.” “Question. How long before you filed your application was it you put this money in the bank of the Idaho Trust Company?” “Answer. Two weeks, I think, or something like that.” “Question. I am speaking of your original application, you understand, not the final proof?” “Answer. Yes, sir.” “Question. You understand this was before your first papers?” “Answer. Yes, sir.” Do you remember those questions being asked you and those answers made by you?

A. No, sir; I do not.

Q. Do you remember whether or not that is the fact?

A. I think it was later; I am pretty sure it was, that I borrowed the money, or just previous to making final proof. I didn't borrow any before I filed on the claim.

Q. I understood you to say just one minute before that you had, and that when you filed your sworn statement, which Mr. I. N. Smith [837—507] prepared for you, you had already gotten the money from the Lewiston National Bank. Is that correct?

A. I had money in the Idaho Trust Company of my own.

Q. I understand that, but hadn't you borrowed the money from the Lewiston National Bank, as you testified a few minutes ago that you had?

A. I don't remember.

Q. You don't remember it? A. No, sir.

(Testimony of Hiram F. Lewis.)

Q. How much money did you have in the Idaho Trust Company at that time?

A. About \$400.00, something like that,—\$300.00 or \$400.00.

Q. That was before you borrowed that money from these people? A. Yes, sir.

Q. Then, you put in how much more?

A. Two hundred, I think.

Q. How long had you had that money in the Idaho Trust, as well as you can remember?

A. I had been carrying an account there about a year, I think, as well as I can remember.

Q. Do you remember these questions being asked you in the trial of Kester, Kettenbach and Dwyer that I have referred to, reported at page 480 of the record: "Question. I am speaking of your original application you understand, not the final proof?" "Answer. Yes, sir." "Question. You understand this was before your first papers?" "Answer. Yes, sir." "Question. You say you took the blank to I. N. Smith's office?" "Answer, Yes, sir." "Question. That Dwyer had given you?" "Answer. Yes, sir." "Question. Did you have a talk with Mr. Dwyer before you went to the land office, before you went to I. N. Smith's office respecting the contents of this application?" "Answer. Yes, sir." "Question. Where did that talk occur?" "Answer. I think it was on the street." "Question. Where had Dwyer given you these blanks?" "Answer. There in the hallway of the bank building on the floor where the land office is." "Question.

(Testimony of Hiram F. Lewis.)

What did Dwyer say [838—508] to you at the time he gave you these blanks?" "Answer. He said to take them in to Smith and have them filled out and then take them to the land office and file them." Do you remember whether or not those questions were asked you and those answers made by you?

A. No, sir; I do not.

Q. You have no recollection of it?

A. I don't remember it that way.

Q. Does that refresh your recollection as to the transaction?

A. He might have done that, but I don't remember whether he did or not.

Q. It wouldn't have been anything very serious if he had, would it, Mr. Lewis?

A. No, sir; but I was thinking that Mr. Smith furnished me the papers.

Q. Do you remember this question being asked you at the trial of Kester and Kettenbach from which I have been reading from the record: "Question. Now, I will call your attention to the statement contained in your application or sworn statement you had filed: 'That I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit.' Did you read this statement over before you signed it and swore to it?" "Answer. Yes, sir." "Question. You knew that was in there?" "Answer. Yes, sir." "Question. Now, when you stated under oath at this time that you did not apply to purchase the land above described on speculation, but in good

(Testimony of Hiram F. Lewis.)

faith to appropriate it to your own exclusive use and benefit, now was that statement when you made it, and so made by you, Mr. Lewis, true or untrue?"

"Answer. Untrue." "Question. Did you know it was untrue at the time you made it?" "Answer.

Yes, sir." Do you remember those questions being asked you at that trial and the answers I have read being made by you? A. I think they were.

Q. The next question: "I call your attention to this other statement in the filing immediately following: 'That I have not directly or [339—509] indirectly made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself,' you recall having read that, do you?" "Answer. Yes, sir." "Question. Now, was that statement true or untrue at the time that you made it?" "Answer. Untrue." "Question. Please explain to the jury what led up to your making these false statements at the time they were made, Mr. Lewis?" "Answer. Well, I was told, after I read them over, and swore to them, that there was nothing in there that would be illegal, or out of the way in any manner." "Question. Who told you?" "Answer. Mr. Dwyer." Do you remember those questions being asked you and those answers being made by you?

A. No, sir.

Q. You won't say that they weren't asked you and that you didn't make those answers, will you?

(Testimony of Hiram F. Lewis.)

A. No, sir.

Q. Do you remember these questions being asked you and these answers made by you at the same time: "Question. And when?" "Answer. At the time I got the blank." I am just continuing to read from where I stopped. "Question. What further did Dwyer say about these matters or what if anything did he say about that proposition that you were taking this up for your own benefit?" "Answer. Why, he said there was nothing out of the way, nothing illegal about it, it was being done right along, and if I swore to those papers it would be all right." "Question. Well, how was this to be for your benefit? How did you understand this to be for your benefit?" "Answer. Well, I was to receive \$150.00 for my right." "Question. What I want to know is, whether or not that was your own suggestion, or the suggestion of somebody else, and if so, who suggested it?" "Answer. It was Mr. Dwyer's suggestion." "Question. Now, with regard to the proposition down here [840—510] that you had not made any agreement, directly or indirectly, with any persons, etc., what, if anything, was said about that?" "Answer. Well, I was told that when I had procured this money, I had some of the money, and I borrowed the rest on my own personal note, was a legal transaction and nothing out of the way." "Question. Who told you this?" "Answer. Mr. Dwyer." Do you remember those questions being asked you and those answers made by you at the trial I have referred to? A. I don't remember.

(Testimony of Hiram F. Lewis.)

Q. Were they the facts as they are reported here, that you did have those conversations with Mr. Dwyer? A. I don't remember.

Q. I read from the same record, page 483, and ask you whether or not you remember the questions which I shall read being asked you and the answers which I shall also read being made by you. "Question. You said here, 'That I have not directly or indirectly made any agreement or contract, or in any way or manner, with any person or persons whomsoever,' now you have already testified here as to the understanding which you had before you filed this paper. Now, why did you state under oath here that you had no contract in view of the understanding that you had?" "Answer. Well, as I said before, I supposed it was a legal transaction, and I had a right after I acquired the land in this way to transfer it and it would be a legal transaction." Do you remember that question being asked you and that answer made by you? A. I think I do.

Q. It was correct, was it?

A. I never had no agreement what I was to do with the claim.

Q. Did you testify falsely then when you say you remember making—

A. That part of it.

Q. Did you do it intentionally? A. No, sir.

Q. What is it that makes your recollection clearer on the subject, now, Mr. Lewis, than it was two or three years ago? You have not talked [841—511] this over with anybody? A. No, sir.

(Testimony of Hiram F. Lewis.)

Q. I say what makes your recollection clear, if it is?

A. Well, there is some points of it there, as I say, when you read it over I can understand it a little better.

Q. You didn't understand the questions then? Is that correct?

A. Well, I don't know as I did, and, as I say, I was intimidated before.

Q. You were intimidated? A. Yes, sir.

Q. You are not a very timid man, are you?

A. No, not naturally, but when you have got two or three men behind you that are going to impeach you and indict you or anything like that—

Q. If I were to threaten to indict you if you didn't testify to what I told you to, would that intimidate you much? A. It might.

Q. Would you proceed to testify as I told you to?

A. No, sir.

Q. I continue to read from the same record, and ask you whether or not the questions which I shall read were asked you at the trial to which I have referred, and whether you made the answers which I shall read: "What I want to know, what I want to get at is this: What was said concerning that, if anything, in this conversation with regard to your not having any contract?" "Answer. Why, we didn't have anything only a verbal contract; there was no papers drawn up or anything that way. All the contract I did have was simply by orally and giving my note for the money." Do you remember that ques-

(Testimony of Hiram F. Lewis.)

tion and answer? A. I think I did.

Q. Who procured your witnesses for you, or named your witnesses for you to give to the land office when you made your original filing?

A. I think I suggested one or two myself, and I think Mr. Dwyer [842—512] did.

Q. Do you remember who the witnesses were that Mr. Dwyer suggested?

A. Well, I can only remember two of the witnesses I had now.

Q. Who were they? A. Melvern Scott and—

Q. And Edwin Bliss? A. Bliss, yes.

Q. Now, let me ask you this: It was not clear to your mind before whether you got the money from the Lewiston National Bank before you made your sworn statement or just prior to final proof. Is that correct? A. Yes, sir.

Q. Do you remember whether, just prior to making your final proof, you saw Dwyer and told him that you did not have sufficient money with which to make proof, and that you and he went to the Lewiston National Bank and you got it and deposited it in the Idaho Trust Company, the amount of money?

A. I don't remember of speaking to Mr. Dwyer about it. I might have done so.

Q. And you got the money from Mr. Kester, did you? A. Yes, sir.

Q. Do you remember what amount you gave your note for? A. I do not, at this time.

Q. Wasn't it \$450.00? A. No, sir.

(Testimony of Hiram F. Lewis.)

Q. Why do you say no?

A. Well, I know I gave two or three different notes, and I can't say positively, I don't think I gave it for that amount.

Q. See if this refreshes your recollection. I am reading again from the record of the trial of Kester and Kettenbach to which I have been referring, page 486 of the record: "Did you see Dwyer and have a talk with him before going up to make your final proof?" "Answer. Yes, sir." "Question. Where did you see him?" "Answer. On the street in [843—513] Lewiston." "Question. What was said there or done?" "Answer. He wanted to know if I had everything fixed to prove up when the time came, and I told him I hadn't yet; it was about two weeks before I proved up. He said: 'You better get fixed up and have everything ready then,' and he wanted to know what was the matter, and I told him I didn't have quite money enough, and he said I better get enough so as to be ready, and he wanted to know how much I needed, and I told him, and went to the Lewiston National Bank and got it, and deposited it in the Idaho Trust Company." "Question. Did Dwyer go there with you?" "Answer. No, sir; I don't think he went in the bank with me." "Question. Who did you get the money from, if you remember?" "Answer. Mr. Kester." "Question. Did you give your note for it?" "Answer. Yes, sir." "Question. Do you recall how much you got at that time?" "Answer. Something over four hundred dollars, I think \$450.00, or something like that,

(Testimony of Hiram F. Lewis.)

enough to pay up for the land and the expenses and witness fees and so forth." Does that refresh your recollection, Mr. Lewis?

A. I don't remember just the amount. The rest of it, I think, is all right.

Q. You wouldn't say it wasn't \$450.00, would you?

A. No, sir. It might have been \$550.00; I don't remember now.

Q. All the business in connection with your brother taking up a claim was to be transacted through you, was it not? A. Yes, sir.

Q. And you did transact it? A. Yes, sir.

Q. And you afterwards sold and received the money on the same conditions under which you had taken up your claim?

A. No, sir, I bought his claim.

Q. On whose suggestion did you buy it?

A. My own.

Q. Didn't you buy it on the suggestion of Mr. Kester at the time Mr. O'Fallon was here, that he told you it would look better for you to buy it?
[844—514]

A. I don't remember any such conversation.

Q. Would you say that that conversation didn't take place? A. No, sir, I wouldn't.

Q. Think again and see if you can think if that is the fact. A. Well, I don't remember.

Q. Did you get the money from the Lewiston National Bank for the expenses of your brother taking up a claim? A. Most of it; yes, sir.

(Testimony of Hiram F. Lewis.)

Q. And for his filing fees and everything else?

A. I furnished him some of the money, too.

Q. How much of it did you furnish?

A. \$150.00 I furnished him.

Q. Did you afterwards convey the claim your brother took up to Kester? A. Yes, sir.

Q. At the same time you conveyed your own?

A. I think they was both conveyed at the same time, yes, sir, about two years, about seventeen months I think after. I paid taxes on them two years.

Q. How much were you given for your brother's claim when you settled up? You did the negotiating, didn't you? A. Yes, sir.

Q. You settled, did you? A. Yes, sir.

Q. Who did you settle with? A. Mr. Kester.

Q. How much did he give you for your brother's claim? A. \$150.00.

Q. How much did he give you for yours?

A. I got \$250.00.

Q. Was that extra hundred dollars for your services in getting your brother to locate? [845—515]

A. No, sir, I got nothing for that.

Q. Your brother was not known at all in the transactions in the bank with reference to these claims, was he? A. No, sir.

Q. You attended to all the transactions?

A. Yes, sir.

Q. Did your brother make his proof at the same time you did?

(Testimony of Hiram F. Lewis.)

A. No, sir, I think—I forget now. It was some time after though; I don't know just how long.

Q. Now, do you remember when you went to the land office to make final proof you were asked certain questions as to whether or not you had made any agreement to sell, and so forth, and that you answered no? A. I don't remember now.

Q. Do you remember this question being asked you at the trials that I have heretofore referred to, and I read from the record that I have been reading from, No. 1605, page 491: "Now, you say you recognize these papers as your testimony given in support of your application to purchase this claim. Now, I want to ask you this: I read from question 13 on the blank testimony of claimant: 'Have you sold or transferred your claim to this land since making your sworn statement, or have you directly or indirectly made any agreement or contract, in any way or manner, with any person whomsoever, by which the title which you may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except yourself?' You remember that question being asked in the land office?" "Answer. Yes, sir." "Question. And you answered that question, no. Was that answer true or untrue at the time you made it?" "Answer. Untrue." "Question. Did you know it to be untrue at the time you made it?" "Answer. Yes, sir." "Question. This other question, number 14, 'Do you make this entry in good faith for the appropriation of the land

(Testimony of Hiram F. Lewis.)

exclusively to your own use, and not for the use or benefit of any other person,' do you remember that question?" "Answer. Yes, sir." "Question. You

answered that [846—516] question, yes. Now, was that answer true or untrue at the time it was made?" "Answer. Untrue." "Question. Question

15. Has any other person than yourself, or any firm, corporation or association any interest in the entry you are now making or in the land or in the timber thereon? Your answer to that was, no. Was that answer true or false at the time it was made?"

"Answer. False." "Question. Did you know it to be so?" "Answer. Yes, sir." Do you remember

those questions being asked you and those answers made by you? A. At Moscow?

Q. Yes, sir.

A. No, sir, I don't remember now.

Q. Do you remember them being asked and made by you at any other place than Moscow?

A. I think they were asked in the land office; I don't remember.

Q. I am asking you whether you remember those questions I have read being asked at the trial at Moscow, and whether or not you made the answers also that I have read.

A. No, sir, I don't remember.

Q. You wouldn't say they weren't asked you, would you? A. No, sir.

Q. And you wouldn't say you didn't make those answers, would you? A. No, sir.

(Testimony of Hiram F. Lewis.)

Q. Continuing, I read from page 496 of the same record: "Mr. Lewis, question 16 on this blank: 'Did you pay out of your own individual funds all the expenses in connection with making this filing, and do you expect to pay for the land with your own money?' To the first part of that question, read as follows: 'Did you pay out of your own individual funds all of the expenses of making this filing?' To that question you answered, 'Yes.' Now, was that answer true at the time you made it?" "Answer. No, sir." Do you remember that question being asked you and that answer made by you at the trial at Moscow to which I have referred? [847—517]

A. No, sir, I don't remember just now.

Q. Well, if it was made by you at that time it was true, was it?

A. No, sir. I never said—I always said I had the money partly.

Q. What is that?

A. I always said I had part of the money and borrowed the rest of it on a note.

Q. Is that what you said in your answer at the land office? A. I think so.

Q. Are you sure? A. I think so.

Q. I asked you if you are sure.

A. Well, I think so. I wouldn't swear to it.

Q. Do you remember this question being asked you: "Question 17: 'Where did you get the money to pay for this land, and how long have you had the same in your actual possession?' To the first part of that question, reading, 'Where did you get the

(Testimony of Hiram F. Lewis.)

money with which to pay for this land,' you answered, 'Saved it from my earnings.' Was that answer true or untrue at the time it was made?"

A. It was true.

Q. Well, at that trial you answered, "Untrue." Which is the truth?

A. I saved the money from my earnings.

Q. The money you paid in the land office at final proof?

A. Oh, final proof? Part of it. I thought you said the filing fees.

Q. No, I said final proof. Why did you answer that in that way if it wasn't all money you had saved from your earnings?

A. Because I had borrowed part of it from the bank.

Q. But you had borrowed about \$400.00 from the bank, had you not? A. Yes, sir.

Q. And your final proof was about \$400.00, wasn't it?

A. It was more than that on the two claims. I borrowed enough so [848—518] as to have some to pay for my brother's claim too.

Q. Why did you say, when you testified at the trial that I have been referring to, that that statement was untrue?

A. I don't know as I stated that it was untrue.

Q. Well, I am reading from the record, Mr. Lewis, and if you want to read it yourself—

A. I don't remember it, Mr. Gordon.

(Testimony of Hiram F. Lewis.)

Q. Do you want to state that you have been misquoted in all of these particulars? A. No, sir.

Q. Wouldn't your recollection of these matters be fresher three years ago than it is now?

A. Yes, but I can't remember all of these little details for six or seven years.

Q. Now, you have referred to two transactions you had with the Lewiston National Bank with Mr. Kester, and one of them was with reference to getting the money at about the time you made final proof. That is correct, is it?

A. Yes, sir, I think so.

Q. And didn't you go to the bank and see Mr. Kester and get the money for the location fees also for your claim and your brother's claim?

A. I don't think I did. No, sir, I know I didn't at that time, that is, I don't think I did.

Q. Don't you remember of having testified to that two or three times?

A. No, sir, I don't remember, but I don't think I got it at the same time.

Q. Each time you went to the bank to get money for these claims, or any payment on them, you got it from Mr. Kester, did you?

A. Yes, sir, Mr. Kester; that is the best of my recollection. I don't remember anybody else.

Q. Do you remember this question being asked you at the trial of [849—519] Kester and Kettenbach, at Moscow, in the spring of 1907: "From whom did you get this money when you went to the bank?" "Answer. Mr. Kester." "Question. On each of

(Testimony of Hiram F. Lewis.)

these occasions?" "Answer. Yes, sir." "Question. Where did you get the money to pay the location fee?" "Answer. In the same way." "Question. How did you happen to go to the bank to get the money to pay the location fees? State the circumstances." "Answer. Mr. Dwyer came to me and told me he had not received his location fee, and we better fix it up. We did so, and I paid him." "Question. Do you remember of anything,—in the first place, I will ask you of whom did you get the money to pay the location fee?" "Answer. From the Lewiston National Bank." "Question. From what individual in the bank?" "Answer. Mr. Kester." "Question. How did you happen to go to the Lewiston National Bank for this purpose at this time?" "Answer. At the instigation of Mr. Dwyer." "Question. Who did you see there if anyone to talk to about this location fee?" "Answer. Mr. Dwyer." "Question. At the bank?" "Answer. Mr. Kester, that is all." "Question. What was said between you and Mr. Kester?" "Answer. I told him that Mr. Dwyer wanted his location fee, and he gave me the money, and I gave him a note for it." "Question. How much money did you get at that time for that purpose?" "Answer. I think I got both fees, \$300.00, I think it was." "Question. What did you do with that money?" "Answer. Gave it to Mr. Dwyer." Do you remember those questions being asked you and those answers being made by you? A. I think so.

Q. And they are correct, are they? That was the

(Testimony of Hiram F. Lewis.)

way the transaction happened?

A. I forget whether I gave it to him then or put it in the bank and then checked it out afterwards.

Q. Now, as near as you can remember, how long after you made proof did you negotiate with Mr. Kester for the sale of your claim? I don't mean when you made the deed. I mean when did you actually sell it?

A. Well, I forget now. It was between sixteen and seventeen months, [850—520] I think, some-think like that. I know I paid taxes on them two years.

The SPECIAL EXAMINER.—It was about that time that you made the deed, wasn't it? He asked you when you first had the negotiations, when you first commenced talking about the trade.

WITNESS.—To transfer the claims?

Mr. GORDON.—Yes.

WITNESS.—Well, I think it was about that time.

Q. How long after you made proof did your brother make proof?

A. I couldn't tell you just how long it was.

Q. Well, was it a week, or two weeks, or three weeks?

A. No, it was two or three months, I think.

Q. How long after you located on your claim did your brother locate?

A. Well, I think that was a month or two; I forget now. No; it was longer than that, I think.

Q. Now, after you made your final proof did you,—after your brother made final proof, didn't you

(Testimony of Hiram F. Lewis.)

go to the bank and take up all the little notes and settle for both claims?

A. No, sir; not after he made proof, because it was quite a while after that I settled up with the bank; I forget just how long it was.

Q. Do you remember why you didn't settle before?

A. No, sir.

Q. Didn't Mr. Kester tell you there was no hurry about it, just to let it rest along that way?

A. I don't remember whether he did; he might have said something of the kind.

Q. Do you remember testifying at the trial of Kester and Kettenbach, to which we have been referring so many times along this line, and I shall read the questions and ask you if you remember them being asked you. "Question. When you had made final proof, or after your brother made final proof, then what transaction did you have at the bank? What transaction did you have at the bank after your brother had made final proof?" "Answer. Why, we settled up for both claims, and it was then [851—521] that I merged these small notes all into one, and they paid me the final balance which was due us both." "Question. The balance of what?" "Answer. Of our location fee, or what we were to receive for our right." "Question. And it was all balanced up and paid up, was it?" "Answer. Yes, sir." "Question. And you say it was all included in the note,—was it all included in the note?" "Answer. Yes, sir." "Question. Why, if you know, did you not convey the land over at that time? What,

(Testimony of Hiram F. Lewis.)

if anything, was said by you to the parties concerning it?" "Answer. Why, Mr. Kester told me there was no particular hurry about it, to just let it lay as it was." "Question. Said what?" "Answer. There was no particular hurry about it; we would just leave it as it was." "Question. When did you finally execute the papers in relation to it?" "Answer. About a year afterwards, I think." Do you remember those questions being asked you, and those answers being made by you?

A. I don't remember all of them, no, sir.

Q. Well, are they the facts?

A. He might have stated that, but I don't remember just now.

Q. Continuing to read from the same transcript, I will ask you if this question was asked you: "State the transaction, how you came to have it?" "Answer. I went to work on the ditch, and I got through, I think it was in May last year, and when I went into town one day I happened to be in the bank and Mr. Kester said that we might as well transfer those papers, and so I went to work and made a transfer to the bank of both claims. I had previous to this had my brother's claim transferred to me." "Question. At whose suggestion, if anyone's?" "Answer. Mr. Kester's." "Question. What had Mr. Kester told you about having your brother's claim transferred to you?" "Answer. He wanted to know if it would be all right to have it transferred over to me, and then have them transferred over to him. I said that I didn't see as there

(Testimony of Hiram F. Lewis.)

would be anything out of the way if he did; I did so.”

“Question. You had your brother’s claim transferred to you?” “Answer. Yes, sir.” “Question.

It was held in your name, then?” “Answer. Yes, sir.” “Question. How [852—522] long after

your brother made final proof was it before this claim was transferred to you, his claim?” “Answer. I

think it was about a year or something like that, ten months, maybe.” “Question. Then it was trans-

ferred to you shortly before,—did you transfer it shortly before you executed this deed to Mr. Kes-

ter?” “Answer. Yes, sir.” Do you remember those questions being asked you and those answers

being made by you? A. I think they were.

Q. And they state the facts as they are, do they?

A. No, sir; not exactly.

Q. You stated them that way, didn’t you?

A. I think I did, but right there was something Mr. Johnson or Mr. Ruick cut out. I stated that I offered other parties the claims, and tried to sell them to other parties, and then went to Mr. Kester to sell them. I tried to sell them to two or three different timber outfits.

Q. And after you made out the deeds you carried them to the courthouse and had them recorded, did you? A. Yes, sir.

Q. At whose suggestion was that?

A. I don’t remember whether Mr. Kester asked me to or not now.

Q. Was the deed made to them or directly to the Lewiston National Bank?

(Testimony of Hiram F. Lewis.)

A. Well, sir, I couldn't say as to that now, either; I forget which.

Mr. GORDON.—Take the witness.

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mr. Lewis, you said that you tried to sell your land to someone else. Can you remember who you tried to sell it to?

A. I tried to sell to Mr. Williams, for one, and Joe Malloy, and I think afterwards Mr. Brown. There was two or three parties I know that I tried to sell it to. [853—523]

Q. That was after you bought your brother's claim? A. Yes, sir.

Q. What success did you have in trying to sell it to them?

A. I couldn't get rid of it; I couldn't dispose of it. They all said it was second growth timber and didn't want it.

Q. How did you come to go to Kester and sell it to him?

A. I went to him just the same as I had been going to these others afterwards, and asked him if he wouldn't buy those claims, that I had tried to sell them to others and couldn't do it, and he finally said if I couldn't sell them he would try and see what he could do to take them off my hands.

Q. Did he tell you to go and see someone else and try to sell them?

A. Yes, sir; he told me to see someone else and to sell them if I could.

(Testimony of Hiram F. Lewis.)

Q. And you went and tried to sell them to somebody else after that? A. Yes, sir.

Q. Then, came back to him? A. Yes, sir.

Q. Wasn't the reason your brother didn't get as much as you did, because he had a short claim, only three forties? A. Yes, sir.

Q. That is the reason you didn't get as much for his claim as for yours? A. Yes, sir.

Q. You say that when you would tell Mr. Ruick and Mr. Johnson something that it was a fact that they would say, "Cut that out; we don't want that?"

A. Yes, sir.

Q. Because that was something that was favorable to the defendants?

A. Yes, sir; I think that was their reason for doing that.

Q. Can you remember any particular thing they told you to cut out?

A. When I spoke about selling these claims to others, they ordered [854—524] that cut out. And in regard to the attorneys Mr. Gordon just brought up, there was another—

Q. Well, Mr. Gordon didn't ask you anything about that; he didn't have that go into the record. That was just talk between ourselves. Can you think of anything else?

A. Well, in regard to borrowing the money, too.

Q. What was that?

A. He asked me or tried to make me state that I had borrowed all of it, all of this money from the bank, didn't have any of my own at the time, and I

(Testimony of Hiram F. Lewis.)

told him I did have money there at the time, borrowed it and gave my notes for it at the bank.

Q. Can you think of anything else?

A. Well, in regard to intimidating me. He threatened to impeach me and indict me, and everything else pretty near, if I wouldn't come out and tell it just to suit them.

Q. I will ask you if you told them anything about paying taxes on the land, and that they told you to cut it out?

A. Yes, sir; I told him I had paid taxes for two years, and had the tax receipts at home,—I had them with me at the same time,—and they said they didn't want me to say anything of that kind, wouldn't allow it; and I have those tax receipts up home now.

Q. You did pay taxes on the land, did you?

A. Why, I paid it for two years.

Q. You stated, Mr. Lewis, that you wasn't sure whether it was just before you filed your sworn statement that you borrowed the money from the Lewiston National Bank or just before you made final proof. Will you give us your best recollection of it now?

A. I think I borrowed some before,—I won't say for sure; and then I think I borrowed some later on; I am pretty sure I borrowed money twice.

Q. Did you say I. N. Smith prepared your filing papers? A. Yes, sir. [855—525]

Q. Do you remember what you paid him for it?

A. I think it was \$6.00.

Q. Aren't you mistaken about that? Wasn't it

(Testimony of Hiram F. Lewis.)

\$1.00 you paid him?

A. I won't say about that; I ain't sure just what it was, the amount. He just merely made out the papers for me.

Q. How much money did you say you had of your own in the Idaho Trust Company at the time?

A. Between \$300.00 and \$400.00.

Q. And, as I understand you, you had no contract or agreement with anyone for the sale of this land before you filed your sworn statement?

A. No, sir.

Q. Or before you made your final proof?

A. No, sir.

Q. And any statement that you may have made relative to that in the two former trials in conflict with your evidence here is wrong, is it?

A. Yes, sir.

Q. Then the affidavit you made when you filed your sworn statement, "That I have made no other application under said acts; that I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit, and that I have not, directly or indirectly, or in any way or manner, with any person or persons whomsoever, made any agreement or contract, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself," that statement was true, was it?

A. Yes, sir.

Q. At the time you made it?

A. Yes, sir.

Q. And at the time you made your final proof?

(Testimony of Hiram F. Lewis.)

A. Yes, sir.

Q. And it is still true? A. Yes, sir. [856—526]

Q. Mr. Gordon asked you concerning the evidence that you gave at the former trial, and he asked you particularly about your direct examination, and read certain portions of your evidence. I will ask you if you remember of identifying an affidavit which you made in the former trial, and which was introduced in evidence in the trial of Kester, Kettenbach and Dwyer, case No. 1605, identified by the stipulation heretofore entered into by counsel, in which the following statement was made, and which affidavit you also testified was true:

“State of Idaho,
County of Nez Perce,—ss.

Hiram F. Lewis, being duly sworn, says: That he is the identical Hiram F. Lewis who testified in the United States Court for the Northern Division, District of Idaho, in the case of the United States of America, Plaintiff, vs. William Dwyer, Defendant; that prior to testifying in said cause I was interrogated by N. M. Ruick, U. S. District Attorney, and told the said U. S. District Attorney many things regarding my purchase of the tract of land in question, which the said Ruick ordered his stenographer to strike from his notes with the statement: ‘We don’t want that,’ and this was always the case when any statement was made which was unfavorable to the Government’s case, or favorable to the defendants. Mr. Ruick also told me three or four times if I did not make certain statements he would take

me before the judge and have me impeached, and many other things which caused me to fear the consequences if I did not leave out of my evidence certain statements which he requested the stenographer to strike out, and add others at his request.

I told Mr. Ruick, among other things, prior to being placed upon the stand as a witness in said case that I owned my land and showed him tax receipts, and that I had tried to sell to other parties, Mr. Williams and Joe Malloy, and there was nothing to prevent me from selling to anyone. I also stated to Mr. Ruick I did not borrow the money from the Lewiston National Bank expressly for the purpose of [857—527] paying for the land, and I had done business with the bank before this timber matter ever came up; that I came to Lewiston for the purpose of getting some timber claims, and using my rights. All this he had the stenographer strike out with the statement: 'We don't want that.' All these statements I aver and swear to be true as herein stated.

I told Mr. Ruick I never made a prior agreement with Mr. Dwyer or Mr. Kester or anyone else; that Mr. Dwyer only told me if I took the claim I could make a little money out of them, and he did not care who I sold them to; so he got his location fee, which is true, and the statements made by Mr. Dwyer to me.

I owned the land fourteen or fifteen months, and tried to sell to other parties, among them being Mr. Williams and Joe Malloy, but no one seemed to want to buy that class of timber at that time.

Mr. Ruick wanted me to make the statement that

Mr. Dwyer looked me up, but that is not true. I was looking for timber, and a chance to locate, and went to Mr. Dwyer myself and offered to pay him his location fee if he would find me a timber claim.

In regard to leaving Mr. Dwyer before I went to Moscow, Mr. Ruick made the suggestion that the defendant had good attorneys. I said Mr. Dwyer told me that if everybody told the truth it would come out all right. Mr. Ruick says, 'Did he not say you would all have to stand together,' but that is not what Mr. Dwyer said. He said, 'If everybody tells the truth, everything will come out all right.' He never said anything about attorneys.

I also state that nothing was said about money being procured from Mr. Kester or the Lewiston National Bank prior to making my declaratory statement, or filing my application to purchase the land, and we had not discussed money affairs until a short time prior to time for making final proof. In fact, I supposed I would have a sufficient amount of money to make the payments, and did not think I would have any trouble raising it if I did not. [858—528]

A short time prior to making final proof, I went to Mr. Kester, and asked him for a loan of the balance of the money necessary to make the payments, and promised to pay him when I sold the claims. Mr. Kester loaned me the money, and I gave him my notes for same, taking it over and depositing it in Idaho Trust Company. We had no arrangement for the purchase of the claims either by Mr. Kester or Mr. Dwyer or anyone else up to this time.

Some time after making final proof, Mr. Dwyer

asked me for his location fee. I again went to Mr. Kester for the money and told him I would pay him as soon as I found a purchaser for the claim. I gave my note for the money, took same to the Idaho Trust Company, and deposited it, and in about two weeks thereafter, I drew out money to pay Mr. Dwyer his location fee, and paid him the first time I saw him, which was about a week after I drew it from the Idaho Trust Company. I had no agreement with Mr. Dwyer or Mr. Kester or anyone else to purchase these claims at this time.

Later on, after I had tried to sell the claims to different parties without success, I went to Mr. Kester and asked him if he would not buy the claim. He (Kester) says, 'I do not care to buy them,' and asked me if I could not sell them to someone else. I told him no, I had tried and cannot do so; I want to pay my note, and you had better buy them. We had some conversation regarding price, and finally reached an agreement and I sold the claims. This is the only arrangement I had with Mr. Kester or Mr. Dwyer or anyone else regarding the purchase of these claims. I further aver that I made this statement of my own free will and not at the request or suggestion of anyone; that I have carefully read the foregoing affidavit, know its contents and aver the same to be true as therein set forth.

HIRAM F. LEWIS.

(Testimony of Hiram F. Lewis.)

State of Idaho,

County of Nez Perce,—ss.

On this 17th day of December, A. D. 1906, before me, Chas. L. [859—529] McDonald, a notary public in and for said county, personally appeared Hiram F. Lewis, known to me to be the person whose name is subscribed to the foregoing affidavit, who, after carefully reading the same to the said deponent, and explaining to him its contents stated to me that he subscribed his name thereto for the uses and purposes therein set forth.

HIRAM F. LEWIS.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate above written.

[Notarial Seal] CHARLES L. McDONALD,
Notary Public in and for Nez Perce County,
Idaho.”

Mr. TANNAHILL.—Q. You remember of identifying that affidavit that was introduced in evidence at that time, do you? A. Yes, sir.

Q. State whether or not that affidavit is true.

A. It is.

Q. And regardless of what you may have said under coercion from Mr. Ruick or Mr. Johnson or Mr. Goodwin or anyone else, or what you may have said voluntarily, or what you may have said inadvertently in the other two trials, or in any statement that you made for Mr. Goodwin or Mr. O’Fallon or Mr. Johnson, the statements you make now are true, are they? A. Yes, sir.

(Testimony of Hiram F. Lewis.)

Redirect Examination.

(By Mr. GORDON.)

Q. Mr. Lewis, do you remember, after that affidavit was introduced in evidence at the trial to which Mr. Tannahill has referred, that you were examined by Mr. Johnson? [860—530] A. No, sir.

Q. How do you remember all that affidavit that was there, and the truth of it, and the minute after you don't remember that you were examined about it?

A. I don't remember that I was examined about it, without it was on the stand.

Q. I mean on the stand, in court.

A. I don't think Mr. Johnson examined me.

Q. And yet you remember all that affidavit, and a minute later you don't remember that you were examined about that affidavit by Mr. Johnson?

A. I was thinking it was Mr. Ruick.

Q. Do you remember being examined by somebody at that trial?

A. Mr. Johnson started to get up and he was so rattled he couldn't, and Mr. Ruick took it up.

Q. The record shows that Mr. Johnson conducted it.

Mr. TANNAHILL.—Mr. Johnson quit quick.

WITNESS.—He started in at it, but he didn't do it, I think.

Mr. GORDON.—Do you remember whether at that time you were working for the contracting firm of Naylor & Norlin? A. Yes, sir.

Q. Do you remember whether Mr. Kester got Mr.

(Testimony of Hiram F. Lewis.)

Dwyer to come to see you with reference to getting that affidavit?

A. I gave it of my own free will.

Q. You did? A. Yes, sir.

Q. You gave it to Dwyer, did you, of your own free will? A. Yes, sir.

Q. Do you remember whether, in that trial, after that affidavit had been read and you had testified similarly to what you have now, this question was asked you by either Mr. Ruick or Mr. Johnson? The [861—531] record shows Mr. Johnson. “Question. I will ask you if it was not a fact that George H. Kester came to you after you were a witness and under oath, and examined, and told you that unless you signed a document that he prepared for you, that you would lose your job?” “Answer. No, sir.” “Question. Didn’t he induce you to make a statement here similar to that?” “Answer. Mr. Kester?” “Question. Yes, or some one for him?” “Answer. No, sir. Mr. Kester never did.” “Question. Mr. Dwyer spoke to you for him?” “Answer. Yes.” “Question. What did he tell you in relation to that?” “Answer. He kind of ripped me up the back for the way the case had gone here.” “Question. What portion of this statement is it that you say is not true?” “Answer. I said this: That the statement I made, Mr. Dwyer took down in his own handwriting.” “Question. This statement?” “Answer. Afterwards this was taken somewhere and typewritten and I never read it afterwards, the statement.” “Question. Did you tell

(Testimony of Hiram F. Lewis.)

him that Mr. Ruick took your statement? Did you tell Mr. Dwyer that Mr. Ruick took your statement?"

"Answer. Here before this Court? Yes, I think so." "Question. The first time you were here?"

"Answer. Yes, I think I did." "Question. You told him that, did you?" "Answer. Yes, sir."

"Question. That is not a fact, is it?" "Answer. Yes, I think it is." "Question. Is it not a fact that

when you first came here to the grand jury that you were brought up and made a statement before you came, before the last day you made a statement to myself voluntarily, and voluntarily in the presence of Mr. Goodwin, and either Mr. Pelletier or Mr. Greb, and that Mr. Ruick was in the grand jury room at this time?" "Answer. I think it was Mr. Ruick,

Mr. Johnson; I think Mr. Ruick took my statement."

"Question. Did you make any statement to Mr. Dwyer that Mr. Ruick had made any suggestion to you in reference to your first statement that you made?" "Answer. No, sir; I don't think I did."

Now, after you had identified that affidavit that Mr. Tannahill has read to you, do you remember those questions being asked you and those answers made by you? [862—532]

A. I remember some of them.

Q. Which of them don't you remember?

(No answer.)

Q. Which of them don't you remember?

A. I don't remember the conversation with Mr. Kester at all, about that affidavit.

Q. But you remember all the transactions of that

(Testimony of Hiram F. Lewis.)

five printed page affidavit that was read to you? Is that correct? A. I do, as he reads it over here.

Q. And still you don't remember the few questions I have read to you that were asked you at the same time? Is that correct?

A. I say I remember part of them, but not all of them.

Q. Which one is it you don't remember?

A. I don't know as I could tell you without looking it over.

Q. Well, you take the book and look it over and see which you can remember, and which you can't.

Mr. TANNAHILL.—Oh, we object to that.

Mr. GORDON.—(Handing witness book.) That is where I began reading, and any question which you don't remember being asked you there—

A. In regard to Mr. Kester's conversation there, that isn't so.

Q. Yes, sir. Now look at the rest of it. You say that question wasn't asked you?

A. No, sir; that is, it might have been asked me, but I say it wasn't so. Mr. Kester never said anything about losing my job or anything of the kind. And in regard to Mr. Dwyer coming to me,—I went to Mr. Dwyer and told him I was going to give the affidavit.

Q. Do you mean to say you didn't make that statement in court at Moscow? Is that what I am to understand? A. Yes, sir.

Q. Are you positive that that report there misquotes you?

(Testimony of Hiram F. Lewis.)

A. I don't remember that I answered it that way.

[863—533]

Q. Don't you know, as a matter of fact, that you did answer that question that way?

A. I may have done at that time.

Q. Was it the truth or wasn't it the truth?

A. It wasn't the truth.

Q. Did you deliberately make a false statement there?

A. I either did, or didn't understand it, but I don't remember answering it that way at all, because I know I went to Mr. Dwyer myself, and as for him ripping me up the back, I never made that statement.

Q. It isn't Mr. Dwyer's nature to speak unkindly to anybody, is it, Mr. Lewis?

A. Well, I think not.

Q. Did you make that statement? That is what I want to know.

A. Well, I don't remember that I did.

Q. Now, let me ask you this: Did any of them talk to you between the time that Mr. Tannahill cross-examined you with reference to that affidavit and the time you were examined by Mr. Johnson or Mr. Ruick? A. No, sir.

Q. It was just immediately following, wasn't it?

A. That I made the affidavit?

Q. Immediately following the reading of the affidavit to you by Mr. Tannahill at the former trial that you were examined and made those answers? Is that correct? A. I think it was.

Q. Was there anything in any of those questions

(Testimony of Hiram F. Lewis.)

that you can't understand, or that there could be any misunderstanding in your mind as to what was meant by them?

(No answer.)

Q. Will you answer?

A. I don't remember Mr. Ruick taking that statement.

Q. You say what? [864—534]

A. I don't remember of his taking that statement.

Q. Is that all that isn't correct there?

A. Well, there is two or three of those questions there that I don't remember answering at all that minute.

Q. You know that you did answer them, don't you, that way?

A. Yes, sir, but I don't remember them now.

Q. Were you telling the truth when you answered them? A. I guess I was.

Q. Are you telling the truth now?

A. I think so.

Q. You are not at all excited now, are you, Mr. Lewis? A. No, sir.

Q. And no one has attempted to intimidate you?

A. No, sir, not recently.

Q. I mean anybody that has been connected with the case since I have been in it? A. No, sir.

Q. Now, do you remember these questions being asked you immediately after you were interrogated with reference to that affidavit and identified it?
“Question. Do you recall this circumstance, that when you came up here last fall as a witness that I

(Testimony of Hiram F. Lewis.)

did interrogate you on two occasions at least before you testified?" "Answer. Yes, sir." "Question. And that I had before me the typewritten statement you had made before, do you recall that?" "Answer. Yes, sir." "Question. And I interrogated you from that typewritten statement, didn't I?" "Answer. Yes, sir." "Question. Do you recall any intimidation used upon you when you made the statement a year ago in my office?" "Answer. A year ago last fall?" "Question. Yes." "Answer. No, sir." "Question. You have no recollection of any intimidation of any sort?" "Answer. A year ago last fall?" "Question. Yes, sir." "Answer. No, sir; not a year ago last fall, but there was last fall." "Question. [865—535] At the time you made this statement, you recall no intimidation at all?" "Answer. No, sir." Do you remember those questions being asked you and those answers made by you?

A. Why, I was off in regard to the dates there, is all.

Q. You got a little mixed on your dates?

A. I was thinking I was only at Moscow one time, but I had been up there twice.

Q. You were a little off on your dates, were you?

A. Yes, sir.

Q. The statement that he had reference to, was that the statement he handed you and that you swore to before Goodwin? A. No, sir.

Q. Wasn't that the only statement you ever signed?

(Testimony of Hiram F. Lewis.)

A. They asked me to sign one, but I wouldn't do it.

Q. That is the only statement that you ever signed, isn't it? A. Yes, sir.

Q. Why wouldn't you sign the other statements they asked you to? A. Because I wouldn't do it.

Q. Why?

A. I think it was subsequent to the time this statement was made, and I wouldn't sign it.

Q. Had somebody given you good advice on the subject? A. No, sir.

Q. Why wouldn't you sign it?

A. They wanted me to go in the sweat-box afterwards, and I wouldn't do that either.

Q. That isn't the question. Why wouldn't you sign the other statement?

A. I got over being intimidated, and found out that the thing had been outlawed, and they couldn't do anything with me, so I wouldn't do it. [866—536]

Q. Hadn't the statute run when you were testifying here? A. No, sir.

Q. This was the last trial that was had.

A. Well, it is the same proceeding all the way through, isn't it?

Q. When was it that you declined to sign a statement because the statute had run?

A. Three years ago, I think.

Q. Was it after these trials?

A. No, sir; it was just after this trial, I think, the last trial at Moscow.

(Testimony of Hiram F. Lewis.)

Q. What did they want you to sign a statement for then?

A. Johnson got up something and wanted me to sign it, and I wouldn't.

Q. That was after this trial we are talking about now, that I am reading from the record of?

A. Yes, sir.

Q. Of course, then, you didn't have that other statement in your mind then, because that didn't happen till afterwards, did you?

A. I think that is correct; they got up one afterwards, and I wouldn't sign it.

Q. I am talking about the statement you made when you said you weren't intimidated. What statement was that?

A. I don't think I ever made any such statement.

Q. It is in the record, Mr. Lewis. You know you made that statement, don't you?

A. It says there that I was intimidated, don't it?

Q. I haven't got to that yet. But wasn't this question asked you: "Do you recall any intimidation used upon you when you made the statement a year ago in my office?" "Answer. A year ago last fall?" "Question. Yes." "Answer. No, sir." "Question. You have no recollection of any intimidation of any sort?" "Answer. A year ago last [867—537] fall?" "Question. Yes, sir." "Answer. No, sir; not a year ago last fall, but there was last fall." A. That was the first trial.

Q. Yes. Now, the statement I showed you today though was made in 1905, which was a year before

(Testimony of Hiram F. Lewis.)

this time you referred to. Wasn't that the statement you referred to that you weren't intimidated in?

A. I don't remember. It was,—I think it was after that. It was that same fall anyhow, or that same time.

Q. Was it that you declined to sign these statements just for contrariness, or was there something in them that wasn't true?

A. Well, I knew I didn't have to sign any statements. They wanted me to go up in the sweat-box and sign one of these statements, and I told Johnson I didn't have to do it.

Q. This place, this sweat-box, was a regular room at Moscow, the sweat-box was a regular room, wasn't it? They didn't have a place to turn on the heat, or anything of that kind, did they?

A. I don't know; they might have turned the heat on.

Q. I mean it was just a regular office. What made you give it that term?

A. I don't know why they gave it that name, but that was the common name it went by, the office.

Q. "At the time you made this statement, you recall no intimidation at all?" "Answer. No, sir." "Question. This statement was made free and voluntarily, was it?" "Answer. Yes, sir." Wasn't that the statement I have shown you here to-day? A. I think it was.

Q. And you weren't intimidated when that statement was made, when you made that before Mr. Goodwin, were you, Mr. Lewis?

(Testimony of Hiram F. Lewis.)

A. I didn't read that over at the time I signed it.

Q. Do you remember this question being asked you: "Now, Mr. Lewis, was that original statement made at the request of Mr. Dwyer? [868—538] How was it taken? State the circumstances under which it was taken." "Answer. You mean this statement?" "Question. I mean this statement produced here and put in evidence to which you refer. I understand that after you left, after the Dwyer trial was concluded last fall, that you were approached by Mr. Dwyer, is that correct?" "Answer. Yes, sir." They have reference to the statement Mr. Tannahill has just read to you. Do you remember those questions being asked you and those answers made by you? Is that correct?

A. No, sir; I went to Mr. Dwyer myself.

Q. Then did you deliberately sit there in court and tell what wasn't true? A. No, sir.

Q. Let me ask you this: Did Mr. Ruick or Mr. Johnson know that you had given this affidavit to Mr. Dwyer? A. I don't know that they did.

Q. Had you told them of it? A. No, sir.

Q. Then, as a matter of fact, you know they didn't know it, don't you?

A. They had it in court at this time, I think.

Q. They didn't have it. Didn't counsel for the defendants have it?

A. I don't know whether they had a copy or not.

Q. Do you mean to say then that this statement that Dwyer came to you and got isn't true?

A. I wouldn't say just how it was now, whether he came to me or we met on the street or some way, how

(Testimony of Hiram F. Lewis.)

it was.

Q. They hadn't talked this over with you, had they? A. No, sir.

Q. "Question. Now, state the whole thing, all about it." "Answer. I say I met him on the street, I think there one day, and as [869—539] I said, he was feeling kind of sore, the way the case had gone, and he said he didn't think I had done him justice, or something to that effect." "Question. Did you say that he stated that you hadn't done him justice? He said who hadn't done him justice?" "Answer. He said I hadn't done him justice." Do you remember that conversation with Mr. Dwyer?

A. I think I did, something to that effect; I don't remember whether it was just that.

Q. "The Court.—Tell the whole thing, how it occurred, without waiting for the counsel to interrogate." "Answer. Also that I met him going up to his office and he took down the statement, wrote it down himself, and afterwards had it typewritten, and in regard to just what was said there, I couldn't state fully to what was said, but he took it down somewhere and had it typewritten and afterwards brought up this, as I say, I never read it after that was copied." "Question. You never read it after it was typewritten?" "Answer. No, sir, which I should have done. It was taken in that form." "Question. You swore to it you think in this form?" "Answer. Yes, sir." Do you remember those questions being asked you and those answers made by you? A. I think I did.

(Testimony of Hiram F. Lewis.)

Q. You had never read that statement Mr. Tannahill read to you until it was read in Mr. —

A. I don't think I read it over after it was copied; I read it over in the first place.

Q. How long were you in Mr. Dwyer's office on that occasion? A. A couple of hours, I guess.

Q. Didn't you testify, when you were asked by these gentlemen on their examination in direct, after that statement was read to you, that you were in there only twenty minutes?

A. It might have been twenty minutes and it might have been two hours. [870—540]

Q. Don't you know the difference between twenty minutes and two hours?

A. I don't know just how long I was in there.

Q. Didn't you tell them it was twenty minutes?

A. I don't remember now.

Q. Don't you know as a fact that you did?

A. No, I don't remember now.

Q. I will ask you if this question was asked you, referring to the time in Mr. Dwyer's office when he took that statement: "You don't think you were over fifteen or twenty minutes that you were up there?" "Answer. No, sir." "Question. Here is a statement containing 700 or 750 words, and you say that Dwyer wrote this out in fifteen minutes?" "Answer. It don't seem to me I was up there that long; it was a very short time." Do you remember that statement being made?

A. I might have said it; I don't remember.

Q. Was it the truth?

(Testimony of Hiram F. Lewis.)

A. I don't remember whether I said it or not.

Q. Haven't you any idea how long you were there?

A. No, sir; it might have been twenty minutes or it might have been two hours.

Q. Can you repeat one word that was in that affidavit that you said you remembered it was all true?

A. Yes, sir, it is true.

Q. I mean that affidavit that was read to you, can you recollect one word that is in it? A. Yes, sir.

Q. Please tell what it is.

A. About the lawyers and Mr. Dwyer there.

Q. That they had good lawyers?

A. That they had good lawyers.

Q. Is that all that you can remember of it?

A. Well, I can't recite it. [871—541]

The SPECIAL EXAMINER.—Do you remember whether that typewritten copy that you signed was worded identically the same as the one Mr. Dwyer drew up there at the time?

A. Well, if I am not mistaken, Mr. McDonald read that over after it was typewritten before I signed it.

Mr. GORDON.—Q. Do you remember at the time that affidavit was identified by you in court whether or not it was handed to you by counsel for the Government immediately thereafter, and he asked you to point out the parts in it that were true and the parts that weren't true?

A. No, sir; I don't remember that they did.

Q. Do you remember them reading the affidavit to you? A. The counsel?

Q. Yes,—counsel for the defendants reading that

(Testimony of Hiram F. Lewis.)

affidavit to you?

A. I forget whether they read it or handed it to me.

Q. Do you remember whether or not it was handed to you by counsel for the Government, and they asked you to point out the parts in it that were true and the parts that were not true?

A. I don't remember whether they did or not.

Q. Do you remember when that affidavit was handed up to you, and you were asked to point out the things you did not say, that you said this: "Prior to being placed upon the stand as a witness in said case that I owned my land and showed him tax receipts." "Question. What about that?" "Answer. That is one that I don't think I ever said." Did you testify to that at Moscow?

A. Well, I don't remember whether I said that or not.

Q. I am speaking about, that was in that transaction. Well, now, what has refreshed your recollection that that part of that affidavit is correct and that you told Mr. Ruick that?

A. That part is correct, because I have the receipts now at home.

Q. And you testified in court when that affidavit was handed to [872—542] you by the Government counsel that you didn't tell Mr. Dwyer that, didn't you? A. I don't remember that I did.

Q. You don't remember testifying that way?

A. No, sir.

Q. I am reading from the record of your testi-

(Testimony of Hiram F. Lewis.)

mony, and I will ask you again: "Prior to being placed upon the stand as a witness in said case that I owned my land and showed him tax receipts." "Question. What about that?" "Answer. That is one that I don't think I ever said." "Question. How?" "Answer. That one, that one thing I don't think I ever said, two or three places here, as I say, I marked them." "Question. Read them out, just read them out." "Answer. Also that, 'I told Mr. Ruick I never made a prior agreement with Mr. Dwyer or Mr. Kester.' " "Question. You want to strike that out?" "Answer. Yes." Do you remember those questions were asked you and those answers made by you, when you were examined by the Government counsel immediately after you had been interrogated by counsel for the defense with reference to that affidavit which had been produced and shown you?

A. If I did, I don't remember it now, because I never did make no prior agreement.

Q. You know you did make those statements if it is here in the record, don't you?

A. Yes, sir, I must have made them.

Q. Was it the truth or wasn't it the truth?

A. It wasn't the truth.

Q. Don't you know when you are telling the truth and when you are not? A. Yes.

Q. Do you tell an untruth when you don't intend to? A. I don't intend to tell an untruth.

Q. Don't you remember, as a matter of fact, that you had that affidavit in your hand and pointed that

(Testimony of Hiram F. Lewis.)

matter out and said you didn't [873—543] tell Mr. Dwyer that?

A. I said I didn't remember doing it at the time.

Q. What has refreshed your recollection?

A. I don't remember whether I did or not.

Q. You answered Mr. Tannahill that the affidavit he read to you was true in toto, and you don't remember whether it was true or not. Is that correct?

A. When he read it over I remember I gave it at the time.

Q. All of it? A. Well, most of it; yes, sir.

Q. What part of it didn't you give?

A. I don't remember that.

Q. Did you give the part of it that you pointed out up there when the matter was fresh in your mind?

A. I said I didn't remember giving that to him, or I don't now.

Q. Then, when Mr. Tannahill read that to you this evening and you told him it was all true, you didn't know whether it was true or not, did you?

A. If I signed it that way I must have given it some time, like these records here.

Q. You told me just now that you didn't read that affidavit over that Mr. Tannahill—

A. I said I didn't read it over after it was type-written, but Mr. McDonald read it over to me.

Q. Is that it? A. Yes, sir.

Q. And you remember all of that?

A. Yes, sir; I remember he read it to me.

Q. I will ask you whether this is true or not, when you were directed by counsel to read out the parts

(Testimony of Hiram F. Lewis.)

that weren't correct and you read this out: "That I told Mr. Ruick I never made a prior agreement with Mr. Dwyer or Mr. Kester." Didn't you state in court that that part of [874—544] that affidavit wasn't true? A. No, sir; I don't think I did.

Q. Was that part of that affidavit true?

A. That I never made no prior agreement?

Q. Yes, sir. A. Yes, sir.

Q. Hadn't you testified in the court half a dozen times just prior to that that you had had an agreement?

A. No, sir; I never have acknowledged that I had a prior agreement to anybody.

Q. "Witness," continuing: "I also state that nothing was said about money being procured from Mr. Kester or the Lewiston National Bank." "Question. Want to strike that out?" "Answer. Yes." Do you remember whether you wanted to strike that out at that time? A. No, sir.

Q. Will you say you didn't want to strike it out, and that you didn't tell them that?

A. I won't say; I don't remember now.

Q. What are we to understand,—that that affidavit which has just been read, all of it, is true? You know, Mr. Lewis, it can't all be true when you are talking to one person and all not true when you are talking to another person, don't you? A. Yes, sir.

Q. I ask you what the truth of the matter is.

A. Well, he just read this over to me here, the whole thing.

Q. Is the whole of that true?

(Testimony of Hiram F. Lewis.)

A. The most of it; yes, sir.

Q. Then the testimony that you gave concerning it at the other trial wasn't true, is that right?

A. Yes, sir.

Q. Then you told what wasn't true when you testified with relation to those things at Moscow, did you?

[875—545] A. Yes, sir.

Q. And you did it deliberately?

A. Well, I didn't intend to.

Q. I will ask you if this question was asked you while you were still reading the affidavit after the question I just asked you before was read: "Is that all?" "Answer. Yes, that is all." "Question. Mr. Lewis, last fall,—will you let me have that statement, please,—last fall when I was interrogating you as a witness before you testified in the case, I have your,—I had the typewritten statement that bore your signature, didn't I?" "Answer. Yes, sir." "Question. In other words, I had this statement, didn't I?" "Answer. Yes, sir." "Question. And you began to tell me a different story from that contained in this statement, didn't you?" "Answer. Well, I don't remember about all the things word for word." "Question. Didn't you, don't you think you did?" "Answer. Perhaps, a little." "Question. Began to talk differently and tell me a different story from what you had sworn to one year before?" "Answer. It was not my intention to do so, but I didn't remember it." "Question. Don't you recall the circumstance that you began to tell me a different story?" "Answer.

(Testimony of Hiram F. Lewis.)

Yes, sir.” Don’t you remember those questions being asked and those answers made by you?

A. No, sir.

Q. Then, is there any statement that can be read to you that you remember what was said at that trial except that affidavit that has been read to you and that you said was all true?

Mr. TANNAHILL.—We object to that.

A. There is some of them I don’t remember.

Mr. GORDON.—Q. Well, I will take them one by one. Do you remember this question being asked you by Mr. Johnson at the time just referred to: “And I asked you how it happened your story was so different from what you had testified to before?” “Answer. Yes, sir.” Do you remember that [876—546] question being asked you and that you made that answer? A. I think so.

Q. “And I asked you which one of the statements was correct, and which one you proposed to stand on, the one you had made the year before, or the one you now made? You remember my asking you that?” “Answer. Yes, sir.” Do you remember that question and answer? A. I think I do.

Q. “And which statement did you decide to stand on?” “Answer. The former statement.” Do you remember that?

A. No, I don’t remember that I did.

Q. “Question. You decided to stand on the former statement and did I not tell you that if the former statement was true I should insist on you testifying as you did in the former statement?” “Answer.

(Testimony of Hiram F. Lewis.)

Yes, sir.” Do you remember that question being asked you and that answer being made by you?

A. I think I do.

Q. And that was a fact, wasn't it? In other words, you had gone up there and were attempting to change your statement, and they drew the first statement on you and wanted to know which one you were going to stand by, is that correct?

A. No, sir; just like I said before, Johnson had always intimidated me, and I thought I had to do just as—

Q. But this was in court, now. There wasn't anybody intimidating you there. Do you remember this question: “Didn't I tell you that I would not permit you to make one statement under oath and then go and attempt to change?” “Answer. Yes, sir.” Do you remember that question and answer?

A. I think I do.

Q. Weren't you telling the truth then?

A. Yes, sir; you can see right there by that question, the way he was putting it, that he was intimidating me. [877—547]

Q. Well, that was their style of intimidation, was it? A. Yes, sir; one of them.

Q. “Question. I told you that if the facts you had stated in the affidavit of November, 1905, were not true that you were subject to indictment, didn't I?” “Answer. Yes, sir.” “Question. I went through every one of those questions with you, didn't I?” “Answer. Yes, sir.” “Question. And you made a still further statement, didn't you?” “Answer.

(Testimony of Hiram F. Lewis.)

Yes, sir." Do you remember all those questions being asked you and those answers being made?

A. I think I do.

Q. "Question. And they were taken down by Judge Beatty's stenographer?" "Answer. Yes, sir." Do you remember that question being asked and that answer being made by you?

A. I don't remember now.

Q. You don't remember somebody sitting there and taking them in shorthand?

A. There was somebody there, but I don't remember who it was.

Q. "Question. And which reiterated the same facts you testified to and which you stated in November, 1905, didn't it?" "Answer. Yes, sir." Do you remember that question being asked and that answer being made by you?

A. No, sir; I don't think I do.

Q. "Question. Did I use any pressure on you other than tell you that if your statements contained in this affidavit made in 1905, and you testified to any other state of facts that you would subject yourself to an indictment for perjury? Did I use any other pressure than that?" "Answer. Yes, sir."

"Question. What was it?" "Answer. You told me you would take me before the judge and have me impeached." "Question. Before the judge?"

"Answer. Yes, sir." Were those questions asked and those answers made by you?

A. I think they were. [878—548]

Q. And they were true, were they? A. Yes, sir.

(Testimony of Hiram F. Lewis.)

Q. "Question. You mean by that, that if you went on the witness-stand here and testified to a different state of facts than these, if these facts were true?" "Answer. Yes, sir." "Question. That I would impeach you, didn't you?" "Answer. Yes, sir." "Question. Did you regard that as a threat?" "Answer. Somewhat, yes, sir." "Question. We went over this statement that was made by you in 1905, and which was sworn to by you, and you admitted to me, did you not, that the facts stated in that statement were true?" "Answer. Yes, sir." "Question. And I told you if you went on the witness-stand and testified to a different state of facts that I would impeach you?" "Answer. Yes, sir." "Question. You remember that distinctly, do you not?" "Answer. Yes, sir." Do you remember those questions being asked you and those answers being made by you?

A. I think I do, but, as I stated before, I never read over that affidavit.

Q. But I am talking about what went on during this examination. You told the truth then, did you not? A. Yes, sir.

Q. "Question. And when you started in and told me a whole lot of stuff and I told you that that,—when I asked you a question and you tried to tell me something on another subject, I pinned you right down to the question, didn't I?" "Answer. Yes, sir." "Question. I required you to say whether a certain fact was or was not true?" "Answer. Yes, sir." "Question. Have I ever told you or asked you or solicited you, Mr. Lewis, at any time to, or

(Testimony of Hiram F. Lewis.)

intimated to you that I wanted anything out of you except the absolute straight truth?" "Answer. No, sir." Do you remember those questions being asked and those answers made by you?

A. Well, if I was telling the straight truth—

Q. I am asking you whether or not you testified as I have read it [879—549] to you now, when you were being interrogated by the court at Moscow.

A. I think I did.

Q. "Question. Never by any intimidation. Did I at noon today decline to have you interview me during recess?" "Answer. Yes, sir." Do you remember that question being asked and that answer made by you? A. Read that again, please.

Q. "Question. Never by any intimidation. Did I at noon today decline to have you interview me during recess?" "Answer. Yes, sir." Is that right? A. Yes, sir.

Q. "Question. Did I tell you at that time, as I told you before, that all I desired you to do was simply to testify the truth?" "Answer. Yes, sir." Do you remember that question being asked and that answer made by you?

A. I don't remember it just at this time.

Q. Is that a fact?

A. I think he asked that question, yes, sir.

Q. "Question. I don't know whether,—I will go to the other matter. Now, Mr. Lewis, I went through this statement of yours, as you already testified, I went through this statement of yours, and I referred to your statement made in 1905, before you testified

(Testimony of Hiram F. Lewis.)

upon the trial?" "Answer. Yes, sir." "Question. When, and you are familiar with that, and in a way familiar with the evidence you gave last fall?" "Answer. Yes, sir." "Question. You made the statement in your affidavit to the following effect: 'I told Mr. Ruick among other things prior to being placed on the stand as a witness in said case that I owned my land, and showed him tax receipts.' I now read from the affidavit which you made before McDonald which has been produced by counsel as your statement, and you say you have no recollection of having made such a statement as that?" "Answer. I think I told you that I had some tax receipts at home." "Question. But I am speaking about the affidavit now. You say you desire that stricken out of this [880—550] affidavit?" "Answer. Yes, sir." "Question. As not having been said by you?" "Answer. Yes, sir." "Question. The next paragraph. 'I told Mr. Ruick I never made a prior agreement with Dwyer or Mr. Kester, or anyone else.' You ask to have that stricken out also?" "Answer. Yes, sir." "Question. That you didn't say?" "Answer. No, sir." "Question. You never made that statement to Mr. Dwyer?" "Answer. No, sir." Do you remember those questions being asked and those answers being made by you at the trial at Moscow, just after you were cross-examined, with reference to the affidavit?

A. Yes, sir, I think the question was asked.

Q. And you made those answers? A. Yes, sir.

Q. "Question. And the next statement: 'Mr.

(Testimony of Hiram F. Lewis.)

Ruick wanted me to make the statement that Mr. Dwyer looked me up.' Do you recall that or do you withdraw that statement? Do you ask to have that statement withdrawn?" "Answer. Is it marked?" "Question. It is marked with a cross." "Answer. Yes, sir." "Question. Do you want to withdraw that?" "Answer. Yes, sir." Do you remember those questions being asked you at that time and those answers being made by you? A. Yes, sir.

Q. "Question. I understand you to say that this statement reading, 'Mr. Ruick wanted me to take the statement that Mr. Dwyer looked me up,' that that was not true, you want to withdraw that statement as not having been made by you?" "Answer. Yes, sir." "Question. Now this further statement: 'I also state that nothing was said about money being procured from Mr. Kester or the Lewiston National Bank prior to making my declaratory statement, or filing my application to purchase lands.' You also state you desire to withdraw that statement as not having been made?" "Answer. Yes, sir." "Question. Now you say these statements that have been withdrawn by you—" "Answer. Never made." "Question. You never swore to this statement knowingly?" [881—551] "Answer. No, sir." "Question. You never read over this affidavit after it was typewritten?" "Answer. No, sir." "Question. And these statements were never known or made by you?" "Answer. No, sir." Do you remember, at the time that we have been referring to, whether or not those questions were asked you and

(Testimony of Hiram F. Lewis.)

those answers made by you?

A. I don't recall now whether they was or not.

Q. You don't say that they weren't, do you?

A. No, sir.

Mr. GORDON.—That is all.

At this time an adjournment was taken until ten o'clock to-morrow morning. [882—552]

On Tuesday, the 30th day of August, 1910, at ten o'clock A. M., the hearing was resumed.

**[Testimony of Albert James Flood, for
Complainant.]**

ALBERT JAMES FLOOD, a witness called in behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. You are Mr. Flood, are you? A. Yes, sir.

The SPECIAL EXAMINER.—Q. What are your initials, Mr. Flood? A. A. J.

Q. A. J.? A. Yes, sir.

Mr. GORDON.—Q. Will you please state your full name? A. Albert James Flood.

Q. Where do you reside, Mr. Flood?

A. At present at Oakesdale, Washington.

Q. Where did you reside in May, 1904?

A. Oakesdale.

Q. Do you remember of filing a homestead entry on the south half of the south half of section 15, in township 38 north, of range 6 east, Boise meridian, at the land office at Lewiston, on May 25th, 1904?

Mr. TANNAHILL.—We object to any evidence

(Testimony of Albert James Flood.)

of the witness in support of either of the actions, upon the ground that it is irrelevant, incompetent and immaterial, the entry of the witness not being involved in either of the actions.

Mr. GORDON.—Answer the question.

A. Well, I filed, but I don't remember the exact date. It was some time during that summer.

Q. Well, are you acquainted with Mr. William Dwyer, a defendant [883—553] in this case?

A. I have met him; yes, sir.

Q. Where did you meet him?

A. In Lewiston.

Q. Will you state the occasion of meeting Mr. Dwyer?

A. I met him first on the street, in regard to a contest that had been entered against this filing that I had made.

Q. This homestead filing?

A. Yes, this homestead filing.

Q. And were you alone, or with someone?

A. No, I was with Williams—Mr. Walter Williams.

Q. Now, state what was said on that occasion?

A. Well, we asked Dwyer about this contest that had been instituted. We had been referred to Dwyer by Mr. West of the land office, to see him in regard to this contest.

Q. Now, who had filed a contest?

A. Well, I understood Mr. West to say that Dwyer had filed a contest, and he stated that he had, or they had, whoever they were, I don't know, and that

(Testimony of Albert James Flood.)

we had no show of winning the contest, and he advised us to drop it and not to appear, and we agreed to relinquish on condition that he would allow us \$50.00 to pay our expenses incurred.

Q. Why did you fix the amount at \$50.00?

A. Well, we didn't fix the amount. He said that is what it would cost him to win the contest.

Q. Now, is that the exact way he said it, or what was the exact language as near as you can remember it?

A. Well, I couldn't say the exact language. That was the gist of it, however.

Q. And was this along in the summer of 1904 that you had this conversation?

A. I think so, yes, sir.

Q. Well, did you see him afterwards about the same matter? [884—554]

A. Yes; I saw him either that evening or the next morning, I am not sure which it was.

Q. Well, did you meet him by appointment the next evening or the next morning? A. Yes, sir.

Q. Or did you just—

A. No; we met him by appointment.

Q. Now, tell about when the appointment was made, and who were present?

A. Well, we were to go with him to the Lewiston National Bank and fix up the relinquishment.

Q. And were you told that you were to see anybody at the Lewiston National Bank?

A. No, not at that time I don't think. I don't remember.

(Testimony of Albert James Flood.)

Q. Well, do you know Mr. William F. Kettenbach? A. I have seen him, yes, sir.

Q. And when you went to the bank did you see Mr. William F. Kettenbach that day?

A. I think so, yes, sir.

Q. Well, now, state what happened when you went to the Lewiston National Bank that day. Who did you meet there?

A. Well, there were two or three gentlemen in there that I didn't know a couple of them, anyway; I didn't know who they were, but I think that Kettenbach was there, and Dwyer and Walter Williams, and we signed the relinquishment papers, and this \$50.00 was to be put in escrow in the Lewiston National Bank until the relinquishment was accepted, as I understood it, or until they had filed on this land some way.

Q. And do you know the date that you signed the relinquishment?

A. No, I couldn't state that—not the exact date.

Q. Did you ever take up any other homestead?

A. No, sir, not in the United States. [885—555]

Q. Did you get any money the day that you signed that relinquishment? A. No.

Q. In what part of the Lewiston National Bank was this conversation?

A. It was in a room in the rear of the bank, I think.

Q. And did you tell Mr. Dwyer that you would relinquish for a certain amount when he told you he would give you \$50.00? A. No, I think not.

(Testimony of Albert James Flood.)

Q. Did you tell him how much expense you had been put to in the homestead, and that you wanted to get that money out of it?

A. Well, I told him we had been out quite a bit more than \$50.00 on it.

Q. Did you tell him how much?

A. I don't know that I did. I might have. I didn't know exactly myself.

Q. Was Mr. Williams present at the bank when you had this conversation? A. Yes, sir.

Q. How long after that was it that you got your \$50.00? A. Several weeks, I think.

Q. And who gave it to you?

A. It was mailed to me.

Q. By whom was it mailed?

A. Well, it was a Lewiston National Bank check or draft of some description.

Q. Do you know who it was signed by?

A. No, I don't.

Q. Do you know where the check is?

A. I cashed it at the Commercial State Bank in Oakesdale, Washington.

Q. Now, do you know what they were holding that relinquishment [886—556] for? Did they tell you why they didn't settle it right away?

A. Well, there was something said about this way, as they mentioned themselves, whoever they were, that we had no show of beating them; that they would file scrip on it; and I don't remember that they mentioned anybody in particular. They may have.

(Testimony of Albert James Flood.)

Q. But you don't understand my question. Why were they to hold this relinquishment in escrow?

A. Well, I understood that they were to hold it until they filed scrip on it—until they had got a filing on this particular land.

Q. Did they say they were going to file on it by scrip? A. I understood that, yes, sir.

Q. Well, I mean from anything that was said did you understand that; or was it just your own impression?

A. Oh, no; I think that was stated, as near as I can recollect.

Q. Who said that? A. Dwyer.

Q. And did he state that in the presence of the others? A. Yes, sir.

Mr. GORDON.—Now, we will read this: It is stipulated by and between the parties that Albert J. Flood filed homestead entry No. 10,485 in the land office at Lewiston, Idaho, on February 24th, 1904, embracing the south half of the south half of section 15, township 38 north, of range east, Boise Meridian; that William Dwyer filed a contest against said entry May 25th, 1904, and that said entry was cancelled by relinquishment July 11th, 1904, which relinquishment was signed by the witness Albert J. Flood.

Mr. TANNAHILL.—The defendants severally object to the evidence of the filing of the homestead and the filing of the contest and the cancellation of the entry by relinquishment, upon the ground that it is irrelevant and immaterial.

(Testimony of Albert James Flood.)

Mr. GORDON.—It is further stipulated by and between the parties [887—557] to these causes that Walter Williams filed homestead entry No. 10,484, at the land office at Lewiston, Idaho, on February 24th, 1904, embracing the north half of the north half of section 15, township 38 north, of range 6 east, Boise meridian; that a contest was filed against said entry by William Dwyer May 25th, 1904; that said entry was cancelled by relinquishment signed by Walter Williams August 23d, 1904.

Mr. TANNAHILL.—The defendants severally object to the evidence, however, upon the ground that it is irrelevant and immaterial.

Mr. GORDON.—Take the witness.

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mr. Flood, who did you first talk with regarding your evidence; regarding the fact that you was wanted as a witness, or what you would testify to?

A. Mr. O'Blennis.

Q. When did you talk with Mr. O'Blennis?

A. Well, some time last winter, at Oakesdale.

Q. And do you remember the conversation you had with Mr. O'Blennis?

A. Well, something on the same lines as the testimony here to-day.

Q. Do you remember that Mr. O'Blennis asked you if Mr. Dwyer didn't use the word "we" instead of the word "I"? A. No, I don't think so.

Q. Are you sure of that, Mr. Flood?

A. I am not sure of the conversation—not that

(Testimony of Albert James Flood.)

sure that I could say that.

Q. Well, don't you remember that Mr. O'Blennis asked you—if he didn't use the word "we" instead of the word "I"? A. I don't remember.

Q. He may have done that?

A. Yes, sir, he may have.

Q. I noticed in your evidence this morning you said first Mr. [888—558] Dwyer says "I," and then you changed it—"I have filed a contest"—and then you changed it to, you said, I, he, or they.

A. No. Well, I understood that Mr. Dwyer filed the contest. I was informed that at the land office.

Q. And when he was speaking of the filing of the contest, why he told you that he had filed the contest?

A. No. I understood there was more than one in it at the time.

Q. Well, Mr. Dwyer didn't tell you that there was more than one in it?

A. Well, he didn't mention any names that I remember, but as I understood it he—my understanding of the matter was that there was somebody else besides him interested in the contest.

Mr. TANNAHILL.—The defendants move to strike out all of the witness' evidence relative to his understanding, upon the ground that it is irrelevant, incompetent and immaterial, and it is a conclusion of the witness and not a statement of fact.

Q. Now, then, you and Mr. Dwyer went to the Lewiston National Bank, you say? A. Yes, sir.

Q. Now, who told you that it was intended to file

(Testimony of Albert James Flood.)

scrip on this land?

A. Why, Dwyer, if I am not mistaken.

Q. Where did he tell you that?

A. On the street.

Q. Are you sure he told you he intended to file scrip on that? A. Yes, sir.

Q. Do you know whereabouts it was on the street?

A. Oh, somewheres on this street here; I don't know exactly where it was.

Q. He didn't tell you that anyone else was going to file scrip on it, did he?

A. Not that I remember of; no, sir. [889—559]

Q. But he told you that he was going to file scrip on the land, and as soon as he could get the scrip filed he would pay you the money, did he?

A. Something of that nature; yes, sir.

Q. And the relinquishment was deposited in escrow with the Lewiston National Bank, and the amount was to be paid into the Lewiston National Bank for you whenever Dwyer took up the relinquishment; is that right?

A. Well, I don't know as that was exactly it. The relinquishment and the money was to have been held in escrow until this filing had been secured.

Q. But whenever Dwyer took out the relinquishment, why then the money was to be sent to you?

A. Yes, sir.

Q. And Dwyer deposited the money there with the relinquishment? A. I don't know.

Q. Well, you deposited the relinquishment?

A. Yes, sir.

(Testimony of Albert James Flood.)

Q. And Dwyer deposited the money?

A. I don't know who put up the money. Somebody there put the money with the bank.

Q. Anyway, the relinquishment and the money was deposited in the bank together?

A. That is the way I understood it.

Q. And when Dwyer took out the relinquishment the money was to be sent to you?

A. Well, that is what I understood by escrow. It was to be put there until certain conditions were fulfilled, and then I was to get the money.

Q. Now, what were the conditions?

A. Well, that's all I know; until they had secured this filing of some description—this scrip. [890—560]

Q. Well, the relinquishment wasn't to be taken out of there and delivered to Dwyer until the money was sent, was it? A. No, I don't think so.

Q. Then the condition was that when Dwyer took the relinquishment out the money was to be sent to you? A. Yes.

Q. And so far as you know that arrangement was carried out? A. Yes, sir.

Q. Now, didn't Dwyer tell you that you couldn't win out? A. Yes, sir.

Q. On that contest, because you never had established a *bona fide* residence upon the land?

A. Yes, sir.

Q. And you had just come down from Oakesdale a few days before you went to the timber; is that right?

(Testimony of Albert James Flood.)

A. Well, I wasn't in the timber very long. I came down from Oakesdale and went in and located.

Q. Do you remember that you filed an affidavit with your homestead application—had an affidavit drawn up and filed that?

A. Well, we made an affidavit that we had a cabin on the place—improvements. I personally didn't build the cabin, but I paid the locator.

Q. You don't know whether the cabin was ever built or not, do you?

A. Well, I wasn't in there to see it, so I couldn't say.

Q. You couldn't say whether it was or not?

A. I didn't see it.

Q. But you made an affidavit that you had a cabin on the place?

A. There was a foundation laid for a cabin.

Q. Well, didn't your affidavit state that you had a cabin on the place?

A. Well, I understood that I had, yes, sir. [891—561]

Q. And that you had resided there for more than 60 days? A. I don't remember that, no, sir.

Q. Isn't it a fact that you had to make that affidavit in order to file before the State's right of 60 days had expired? A. I don't know.

Q. You don't know whether that is a fact or not?

A. No, sir.

Q. And you don't know whether your affidavit stated that you had been residing there for more than 60 days? A. No, sir.

(Testimony of Albert James Flood.)

Q. As a matter of fact, you had not resided there 60 days, had you? A. No.

Q. You had only stayed overnight there?

A. That's all.

Q. And you don't know whether you stayed on your claim or Walter Williams's?

A. Oh, yes; I knew the numbers of the land where I was in.

Q. Well, whose place did you stay all night on, your place or Walter Williams's?

A. I stayed on mine. I didn't go into the timber at the same time that Walter Williams did.

Q. When did Walter Williams go in?

A. He went in a week or ten days following me.

Q. The lines were run before that, were they?

A. The survey?

Q. Yes, the survey?

A. Oh, yes, the survey had been run.

Q. You don't know who run the survey, do you?

A. No, I don't.

Q. Don't you know that Dwyer had cruised out this claim and run the lines before you ever went into the timber? [892—562]

A. I don't know that; no.

Q. You don't know whether he did or not?

A. No.

Q. Don't you know that Dwyer had cruised this timber, run the lines, and estimated the timber, for the purpose of locating another man on the claim, and this man who located you (Warren Lawrence) simply went in there and attempted to appropriate

(Testimony of Albert James Flood.)

the location? A. No, I don't know that.

Q. That might have been the case?

A. It may have for all I know.

Q. You paid Warren Lawrence a location fee, did you? A. I was to pay him \$100.00.

Q. But you didn't pay him? A. No, sir.

Q. Why didn't you pay him?

A. We wasn't to pay him unless we got the filing.

Q. Well, you got the filing, didn't you?

A. Well, but it was contested.

Q. And you didn't have to pay him until you seen whether or not you was going to be able to hold the land? A. No, sir.

Q. You expected possibly that there would be a contest, didn't you?

A. No. I was told that we could change our filing to a stone and timber filing and buy the land.

Q. Oh! Then you intended to change your filing to a stone and timber? A. Yes, sir.

Q. That was your intention? A. Yes, sir.

Q. But you filed your homestead on it to defeat the State's prior rights? [893—563]

A. We were told by Mullan over here that that is the way to fix up the papers.

Q. And didn't he tell you that that was the only way to defeat the State's rights?

A. Well, there seemed to be several hundred around Mullan's, and there wasn't much said only making out the papers.

Q. But he might have told you that?

A. Well, he might have.

(Testimony of Albert James Flood.)

Q. And all you know is what is in your affidavit of prior settlement, that you had a cabin on the land?

A. Yes, sir.

Q. Well, as a matter of fact you don't know whether you had a cabin on the land or not?

A. I wasn't in there.

Q. Now, don't you know that between the time you left your claim and when you filed your claim, that the locator would not have had time to build a cabin? A. He certainly would.

Q. How long a time would he have had?

A. Oh, it was several weeks before I came from the timber to Lewiston.

Q. Well, didn't you say you came right back from the timber?

A. Well, I find I was mistaken. I went back to Oakesdale. When I came down to Lewiston to file I had the intention of going into the timber again, but I got word at Potlatch to come to Lewiston and file.

Q. Then your evidence that you had come right direct from the timber to Lewiston is wrong, is it?

A. That is a mistake, yes, sir. I don't know how much time elapsed, but it was quite a little time. Walter Williams went in there with a party in the meantime, between the time I came out and the time I filed. [894—564]

Q. Now, when you testified in Boise: "Now, when was you on this claim?"—reading from page 324 of the record of the case of the United States against Kester, Kettenbach and Dwyer, held at Boise, Idaho,

(Testimony of Albert James Flood.)

on February 19th, 1910,—which you answered: “Just previous to filing.” “Question. How long before you filed?” “Answer. Oh, we came right out of the timber, to Lewiston.” “Question. How is that?” “Answer. We came right out of the timber to Lewiston.” “Question. You came right out of the timber to Lewiston?” “Answer. Yes, sir.” “Question. And who was with you?” “Answer. Well, there was Walter Williams, and a man by the name of Lawrence—two named Lawrence—two men named Lawrence—and a man named Brown, from Oakesdale, Washington, was along.”

A. Yes; I was mistaken in regard to that. I went to Oakesdale between the time that I came out of the timber and filed here in Lewiston.

Q. Now, how did you come to describe all of those men, and the route you went, and go into details about it at that time?

A. Well, there was two parties went in there, and Williams was under the impression that he went in when I did, and that is how I got that mixed up. But Brown, I know that Brown and Lawrence—old man Lawrence—and his son went in the time that I did. I had given up ever hearing anything of the matter again after I relinquished, and had been away for six or seven years and hadn't heard anything about it, in fact, and had been in Canada in the meantime, and there are lots of details, of course, that I can't remember.

Q. How did you happen to come to Lewiston the second time?

(Testimony of Albert James Flood.)

A. Well, I got notice when I would be ready to file on these claims. I was notified by the man that located us that the land office would be open for filings on this land on a certain day.

Q. Now, when were you on the land?

A. I don't remember the exact date. I think it was some time in February. [895—565]

Q. And when did you leave Oakesdale?

A. I left on the N. P. train. I don't remember the exact date.

Q. Was it in February you left Oakesdale?

A. When we went into the timber?

Q. Yes.

A. I think so. I ain't positive. It was in the winter, anyhow; there was snow on the ground.

Q. And which way did you go?

A. I went to Potlatch Junction and I took the train to Greer, and went to Pierce City from Greer on horseback.

Q. And where did you go from Pierce City?

A. I went out into where the claim is.

Q. How did you succeed in reaching the claim in February? A. I went on foot.

Q. Did you go on snowshoes?

A. No, sir; we didn't; the snow was crusted.

Q. How long was you away? How long was you making that trip from Pierce City to the claim?

A. About three days, in and out.

Q. And when you testified that it was April you was on the claim, at this trial in Boise, you was mistaken, was you?

(Testimony of Albert James Flood.)

A. I am not sure about the dates at all. I couldn't say the exact date.

Q. It might have been April that you was on this claim?

A. No; it wasn't; it was earlier; there was snow on the ground.

Q. Then you were mistaken when you testified in Boise that it was April, were you? A. Yes, sir.

Q. Then how long do you say you was making the trip from Pierce to the claim?

A. About three days, in and out.

Q. About three days, in and out? [896—566]

A. Yes, sir.

Q. How far is it from Pierce?

A. I have no idea. I suppose 25 or 30 miles.

Q. And where did you go after you reached Pierce City? A. Back to Greer.

Q. And then where did you go?

A. I went to Oakesdale.

Q. Who was with you when you went to Greer?

A. Brown and—I am not sure—I think one of the Lawrences came out, too—yes, I am sure they did.

Q. Where did you stop at Pierce?

A. I don't know the name of the place; it was a hotel there; some fellow, I think they called him "Colonel," that ran the hotel—Colonel something.

Q. Now, how long did you stay on your claim?

A. I stayed there all night, and possibly part of the next day.

Q. Are you sure you didn't stay any longer?

A. No, I don't think so. I might have stayed all

(Testimony of Albert James Flood.)

day. I don't remember just exactly when we started out from there.

Q. Now, where did you go after you left Greer?

A. Going in?

Q. No—coming out. A. I went to Oakesdale.

Q. Did you go by train to Oakesdale?

A. Yes, sir.

Q. Why didn't you come on to Lewiston?

A. Well, the land office wasn't ready to accept filings on this land at that time.

Q. And you came down the first day that the land office was open? A. Yes, sir.

Q. That the land was open for filing?

A. Yes, sir. [897—567]

Q. And you made your filing at that time?

A. Yes, sir.

Q. Now, how long did you stand in line before you was able to file?

A. We were here a couple of days—two or three days.

Q. The homestead filings were accepted before the stone and timber filings, were they?

A. I believe so, yes; the homestead filings came first.

Q. And that was quite a line-up, wasn't it?

A. Yes, there was a big crowd there.

Q. About how many were in line?

A. There seemed to be several hundred.

Q. As a matter of fact, that was the biggest line-up that was ever known before the land office, was it not? A. I don't know.

(Testimony of Albert James Flood.)

Q. The biggest that you know of?

A. It was the only one that I was ever in.

Q. Now, isn't it a fact that you filed a homestead on this claim for the purpose of getting ahead of the stone and timber claims, and for the purpose of defeating the State's 60 days' prior right?

A. Well, I understood it wasn't to defeat the stone and timber, but to defeat—to get ahead of the State on the filing.

Q. That was your understanding?

A. Yes, sir.

Q. And you intended afterwards to change it to a stone and timber?

A. That is what I was informed, yes, sir.

Redirect Examination.

(By Mr. GORDON.)

Q. Do you remember the date of the line-up that you referred to?

A. I couldn't remember that. It could easy be found out, though. [898—568]

Q. Well, I know; but was it the date that you filed your homestead entry?

A. That was the day of the line-up.

Q. It wasn't the date that you relinquished?

A. Oh, no.

Q. Now, from Mr. Tannahill's question I think it appears that the money was deposited with the relinquishment. A. Well—

Q. When it was put in escrow, do you know whether it was or not, or whether the relinquishment was deposited, and when that was used you were to

(Testimony of Albert James Flood.)

get a certain amount of money?

A. Well, the way I understood it was that the money was to be put in escrow until Mr. Dwyer had secured his filing, as I understood it at that time.

Q. And you didn't know who was to put the money up, or anything of the kind?

A. No, sir; I didn't know anything about it at all.

Q. Now, you have used the statement that it was your understanding that there were others interested in this contest besides Mr. Dwyer. I will ask you whether there was anything said by Mr. Dwyer that gave you that understanding; if so, what was it?

A. Well, I couldn't state exactly what our conversation was; but I just understood that there was more than Mr. Dwyer interested in those proceedings, was all.

Q. Now, from whom did you get that understanding? A. From Mr. Dwyer.

Q. Now, could you remember anything that was said that led you to believe that?

A. I can only remember the general trend of the conversation. I couldn't remember any particular part of it at all.

Mr. TANNAHILL.—The defendants renew their motion to strike out the statement of the witness as to what his understanding was, on the ground that it is immaterial, a conclusion, and not a statement of fact. [899—569]

Mr. GORDON.—Q. Was it because he used the plural pronoun in referring to those matters?

Mr. TANNAHILL.—We object to that as leading

(Testimony of Albert James Flood.)

and suggestive.

WITNESS.—I couldn't state positively just what language he did use.

Mr. GORDON.—Q. No, I know; but did he use the word "I," or "we," or "they," or what?

A. Well, I couldn't say that, either, positively—just the general understanding.

Mr. TANNAHILL.—The defendants move to strike out the evidence of the witness and the statement of the witness as to his understanding, upon the ground that it is a conclusion, and not a statement of fact.

[Testimony of Walter Williams, for Complainant.]

WALTER WILLIAMS, a witness called in behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. You are Walter Williams, are you?

A. Yes, sir.

Q. Where do you reside, Mr. Williams?

A. I am at Oakesdale now.

Q. Where did you reside in February, 1904?

A. I think I was working on the boat here, on the steamer.

Q. And you made a homestead filing at the land office at Lewiston in February, 1904, did you not?

A. Yes, sir, I think it was. I don't remember the exact date, [900—570] but it was about that time.

Q. And did you perfect that entry? A. No, sir.

Q. Why not? A. Well, we relinquished it.

(Testimony of Walter Williams.)

Q. Well, did anything happen before you relinquished it?

A. Well, we were notified that there was a contest filed against the claim.

Q. Who notified you of that?

A. I think it was Mr. West, the gentleman in the land office.

Q. And you came down to the land office?

A. Yes, sir.

Q. With whom did you come?

A. Why, Mr. Flood.

Q. Albert J. Flood, who has just testified?

A. Albert J. Flood; yes, sir.

Q. Well, state what happened while you were down here on that trip.

A. Well, I think Mr. West referred us to a gentleman—Mr. Dwyer.

Q. Who is Mr. West?

A. He was there in the land office—from the land office—Receiver, I believe.

Q. He referred you to Mr. William Dwyer?

A. Yes, sir.

Q. And did you see Mr. Dwyer? A. Yes, sir.

Q. Well, state what took place at the time that you saw him.

A. Well, I believe he said that we couldn't prove up on the land, if I remember right. I think he said the railroad had filed scrip on the land.

Q. Did he mention the railroad? [901—571]

A. The N. P., and that it would cost him—I believe he was going to contest it—and that it would cost him

(Testimony of Walter Williams.)

\$50.00 to contest it, and he was willing to let us have that much for our expenses.

Q. Your expenses on what?

A. The expenses of going out to see the land.

Q. And what were you to do to get that \$50.00?

A. Relinquish.

Q. Well, where was this conversation?

A. I believe we first met him on the street.

Q. And did you accept his proposition then, or what happened?

A. Well, we talked it over, and then I believe we came to the conclusion that it was the best thing we could do.

Q. And did you relinquish that day or some other time? A. I think it was the same day.

Q. And where did you go to make out the relinquishment?

A. We went to the office there by the bank—of the Lewiston National Bank.

Q. Were you in the bank at any time?

A. I don't think we were in the main bank. We went to the office, I think.

Q. What office?

A. I think it was their private office.

Q. Whose private office? A. The bank's.

Q. And who did you see at that place?

A. Mr. Dwyer and Mr. Kettenbach.

Q. What Kettenbach? A. W. F. Kettenbach.

Q. And what conversation took place at that time?

A. I don't remember exactly, but I think that he told us like Mr. Dwyer, that we could get our right

(Testimony of Walter Williams.)

back, but we didn't have no chance to make the final proof on the claim. [902—572]

Q. And did you relinquish then? A. Yes, sir.

Q. And who was present besides you and Mr. Kettenbach and Mr. Dwyer?

A. I don't remember for sure whether anybody was—there might have been.

Q. Was Mr. Flood present?

A. Oh, yes, Mr. Flood, but nobody else.

Q. Did you get any money when you relinquished?

A. No, sir. I think they sent us the money after the papers were made out.

Q. Now, what was told you on that occasion about being able to get your right back? What was that?

A. Well, they seemed to think we could get it back. I don't remember exactly the conversation. That is the way we understood it.

Q. Well, what was this right that you were to get back? To file on another homestead?

A. Yes, sir—our homestead right, to file on another homestead.

Q. That that would not exhaust your right?

A. Yes, sir. That is the way we understood it.

Mr. TANNAHILL.—Mr. Gordon, is this one of the entries—the land that this man filed on and relinquished—is it one of the entries which is involved in either of the suits?

Mr. GORDON.—I think it is, but I can't tell you for certain.

Mr. TANNAHILL.—For the purpose of saving the record, for the reason that I am not sure that this

(Testimony of Walter Williams.)

entry is involved in either suit, the defendants severally object to any further evidence of the witness in support of either of these actions, upon the ground that it is irrelevant, incompetent and immaterial, the entry of the witness, in so far as I am able to learn at the present time, is not involved in either of the actions. [903—573]

Mr. GORDON.—Q. Were you advised by either of these parties to go and see a lawyer as to whether or not your relinquishment of that kind would put you in a position so that you could file on another homestead entry?

Mr. TANNAHILL.—We object to that as leading and suggestive.

Mr. GORDON.—Answer the question.

A. Why, no. Mr. Dwyer referred us to a lawyer if we wanted to see about it, but that's all, I think. I forget the lawyer's name. There was two of the gentlemen.

Q. And where was that, the first time you met him, or was that at the bank?

A. I think that was after we had relinquished.

Q. And how long after you signed the relinquishment did you receive the \$50.00?

A. Well, sir, I couldn't say exactly. I was working on the boat, and I am not sure. I think, though, they sent it through the mail—a check.

Q. Do you know whose check it was?

A. No, sir, I don't remember.

Q. And you cashed the check, did you?

A. Yes, sir, if it was a check; I think it was. I

(Testimony of Walter Williams.)

know I got the money.

Q. Do you know on which bank the check was drawn? A. No, sir, I couldn't say.

Mr. GORDON.—Counsel for the Government make demand on the defendants that they produce the check paid to Mr. Flood and the witness Williams, in payment of the relinquishments.

Mr. TANNAHILL.—Counsel for the defendants states that they do not know whether they have that particular check or those checks or not, but will make search for them, and if they have them and can find them I will be glad to produce them; and counsel for the defendants asks Mr. Dwyer, who is present now, to make search for those checks and ascertain [904—574] whether or not they can be found.

Cross-examination.

(By Mr. TANNAHILL.)

Q. When did you go upon this land, Mr. Williams?

A. Well, sir, I couldn't say the exact date; it was just a little while before we filed.

Q. How long before you filed?

A. I couldn't say exactly. It couldn't have been over a couple of weeks, though, I don't think.

Q. And who was with you on the land?

A. That is the gentleman that located us, and several other men.

Q. Do you remember his name?

A. The locator?

Q. Yes. A. Mr. Lawrence.

Q. And who else was with you?

A. Why, one of his sons, and his name was

(Testimony of Walter Williams.)

Lawrence, and a man named Conrad, and there was—I believe that there was some other—I believe there was two of his boys went with us—two of the Lawrences.

Q. And how long was you making the trip from Pierce City to the claim? You went to Pierce City, did you? A. Yes, sir.

Q. How long was you making the trip from Pierce City to the claim?

A. I think we camped one night on the road was all, and got in the next day.

Q. And how did you get in from Pierce City?

A. We walked.

Q. Did you go on snowshoes?

A. No, sir. We didn't have no snowshoes.

Q. And did you do any work on the claims?

A. No, sir, not while we was there. [905—575]

Q. Was there any improvements on the claims?

A. Well, this gentleman—this locator—he was going to start—he started to put up our cabins. We hired him to put up a cabin. He just had the foundation in.

Q. And there was no cabin on the claims when you left? A. No, sir.

Q. Did the locator come back to Pierce City?

A. No, sir.

Q. He stayed there? A. Yes, sir.

Q. And then you came direct to Lewiston?

A. Yes, sir.

Q. And you found out that in order to get your fling you had to make an affidavit that you had been

(Testimony of Walter Williams.)

on the land so many days, and that you had certain improvements on the land, and so on?

A. That was when we filed?

Q. Yes. A. I don't remember.

Q. Don't you know that the stone and timber people, or the homestead people, had the prior right over the stone and timber people, and that the State had 60 days' prior right over everybody unless it was bona fide settlers under the homestead law?

A. No, sir, I didn't know it.

Q. Didn't you understand that you had to make that affidavit and file a homestead, for the purpose of defeating the State's prior right?

A. No, sir, I didn't understand it that way.

Q. Didn't Mr. Mullan, the man that made out your papers, tell you that? A. I don't think so.

Q. Didn't Mr. Flood tell you that?

A. I don't remember, if he did. [906—576]

Q. But in order to get a filing at that time you knew you had to file a homestead, didn't you?

A. Yes, sir; that's what we were told.

Q. And you intended to change it later, and file a stone and timber?

A. I don't remember. I don't think so.

Q. Now, you didn't intend to go out there and live, did you? A. Well,—

Q. To make a farm out of that?

A. I don't hardly know.

Q. Well, you know you didn't, don't you?

A. It would be a pretty hard proposition, I guess it would have been.

(Testimony of Walter Williams.)

Q. Well, don't you know you was taking it for the timber?

A. Well, we was taking it because we had a right, and had a right to use.

Q. But it was for the timber that you was taking the land?

A. Well, it might have been as much for that as for the land.

Q. And it wasn't very good farm land, was it?

A. It wasn't very good then; there was snow on the ground then.

Q. And you expected to relinquish it later on and file a stone and timber, didn't you?

A. No, sir, I don't remember it that way.

Q. You expected to handle yours the same way that Flood was handling his, didn't you?

A. Well, likely. We didn't talk. I don't remember having any conversation with him about filing a stone and timber on it.

Q. Did you know that in order to get your filing at that particular time you had to file a homestead? You understood that, didn't you? A. Yes, sir.

Q. And that was the reason you filed a homestead? [907—577] A. I suppose so.

Q. And that was the reason you made your affidavit of prior settlement?

A. I don't remember making no affidavit. I know that they said we had to file a homestead to file at all.

Q. And who said that?

A. There in the land office, and I think the lawyer—the gentleman that made out the papers.

(Testimony of Walter Williams.)

Q. Do you remember why they told you you had to file a homestead if you filed at all?

A. No, sir, I don't remember.

Q. Didn't they tell you because the 60 days' prior right of the State had not expired?

A. I don't remember, if they did.

Q. Now, how long before you filed on this land was it that you was upon the land?

A. Well, sir, I couldn't say exactly. I don't think it was over a couple of weeks; I ain't sure, though.

Q. Did you come direct from the land of Lewiston?

A. Yes, sir; I went back to work on the boat.

Q. And you had only been on the land once?

A. That was all.

Q. And stayed over night, or camped on the place one night?

A. I ain't sure whether we stayed one or two nights; not over two, anyway.

Q. And at the time you didn't know whether there was a cabin on the claim or not?

A. Well, there was supposed to be. They had started to build it, and we paid for having it built.

Q. But if the facts were that there was no cabin on the claim, why of course you didn't know? [908—578]

A. No, sir. We was never back there since.

Q. All you know about it was that you had hired the locator to build a cabin?

A. Yes, sir, and he had started to build it.

Q. Now, didn't Dwyer tell you that there was no cabin on the claim when he talked with you about this

(Testimony of Walter Williams.)

contest? A. Mr. Dwyer?

Q. Yes?

A. I don't remember. He might have.

Q. Didn't he tell you that there were no improvements on the claim at all? A. I don't remember.

Q. Didn't he tell you that he had cruised out this claim and had run out the lines and had intended to locate other people on the claim?

A. Well, sir, he might have, but I don't remember him saying it.

Q. Now, you say that you met Mr. Kettenbach when you signed this relinquishment?

A. Yes, sir.

Q. Do you know which Kettenbach that was—Otto Kettenbach or W. F. Kettenbach?

A. W. F. Kettenbach was in the office, but I am not sure whether the other gentleman was in there or not. He might have been.

Q. Otto—the man you met was quite a light-complexioned man, wasn't he?

A. No, sir, I don't think so.

Q. Did he take your acknowledgment to this relinquishment?

A. Well, sir, I can't say for sure whether the other gentleman was in there or not. I know Mr. Dwyer and this other Mr. Kettenbach was there, and the other might have been in there.

Q. Was the Mr. Kettenbach that you met there at the cashier's window?

A. We wasn't in the bank at all. [909—579]

Q. You wasn't in the bank at all? A. No, sir.

(Testimony of Walter Williams.)

Q. That is when you deposited this relinquishment in escrow that you met W. F. Kettenbach, or that you met one of the Kettenbachs?

A. Yes, sir; it was in the office—I think it was the office that belonged to the bank. I am not sure about that. It was right next to the bank.

Q. Right next to the bank?

A. Yes, sir, in the same building.

Q. In the same building? A. Yes, sir.

Q. Was it in a room? A. Yes, sir.

Q. Which side of the bank was it on?

A. I think it was on the far side from this Main Street.

Q. On the north side?

A. Yes, sir, I suppose so.

Q. And what Kettenbach told you was that Kettenbach told you you could get your right back?

A. Well, I don't know if he said for certain, but he said he thought we could.

Q. And you delivered this escrow paper—this relinquishment—to W. F. Kettenbach, did you?

A. No, sir—Mr. Dwyer and him together.

Q. Well, you deposited that in escrow in the Lewiston National Bank? That was your intention, wasn't it? A. Yes, sir, I suppose.

Q. And the money was deposited with it, and when Mr. Dwyer took up that relinquishment that money was to be sent to you?

A. Yes, sir, I think that is the way we understood it.

Q. And he wasn't to get the relinquishment out of

(Testimony of Walter Williams.)

the bank until the money was sent to you, or it was to be done at the same time— [910—580] simultaneously. A. I suppose so, yes, sir.

Q. And that is all the business you had with W. F. Kettenbach regarding this transaction?

A. Yes, sir, that was all.

Q. And you are not sure whether it was W. F. Kettenbach or Otto Kettenbach?

A. I am sure Mr. W. F. Kettenbach was in there, but I am not sure whether the other gentleman was there or not. He might have been there.

Q. Now, you say that Dwyer said that you could not prove up on the claims because the N. P. Railroad Company had filed scrip on it. Now, wasn't you mistaken about him saying that the N. P. Railroad Company had filed scrip on it?

A. No, sir; that is the way I understood him.

Q. Didn't you testify at Boise that he told you the N. P. Railroad Company was going to file scrip on it?

A. I think I said they had or were going to file.

Q. They had or were going to file, and didn't he tell you that you couldn't prove up on it—that you couldn't hold it because you had no improvements on the land?

A. I don't remember him saying that.

Q. And because that the affidavit that you had filed to shut off the prior rights of the State was false? Didn't he tell you that?

A. I don't remember.

Q. He might have told you that?

(Testimony of Walter Williams.)

(No answer.)

Q. He might have told you that?

A. He might have, yes, sir.

Q. In fact, after you found out that there was no cabin on your claim, and that your affidavit had been examined, you found out that that affidavit wasn't true, didn't you? [911—581] A. No, sir.

Q. You didn't find that out?

(No answer.)

Q. Did you read that affidavit over before you signed it?

A. I suppose I did. I don't remember now what was in it.

Q. Did you remember it at the time you talked with Mr. Dwyer?

A. Well, sir, I can't say whether I did or not.

Q. Did he call your attention to that affidavit?

A. I don't remember him doing so.

Q. I believe you said you got \$50.00 for relinquishing the claim?

A. No, sir; we got the \$50.00 to pay for our expenses. That is what he gave it to us for. He said he couldn't pay for the relinquishment. He just paid us that for our expenses.

Q. I see. You have never tried to file an additional entry, have you? A. No, sir.

Q. As a matter of fact, you know that you could file an additional entry if you would find a tract of land that you wanted to take up, do you not?

A. That I could?

Q. Yes.

(Testimony of Walter Williams.)

A. No, sir; I ain't sure, whether I could or not.

Q. And you are not sure whether you couldn't?

A. No, sir. I never tried to file one.

Q. And you don't know whether Mr. Dwyer gave you wrong advice regarding that, do you?

A. No, sir.

Q. So far as you know, his advice was correct?

A. So far as I know; yes, sir.

Redirect Examination.

(By Mr. GORDON.)

Q. Mr. Williams, you used the expression that when you had that [912—582] conference or conversation with Mr. Dwyer and Mr. William F. Kettenbach—W. F. Kettenbach—that you were not in the bank. Now, what did you mean by that?

A. I think we were in that room in the private office. I suppose it is connected with the bank.

Q. Is it on the first floor of the bank building?

A. Yes, sir.

Q. You meant that that conversation did not take place in the part of the bank where they had the windows and the counters and such things and where they transacted their business? A. No, sir.

Q. This man that you say was there by the name of William F. Kettenbach is the same gentleman that you saw at the trial as one of the defendants at Boise? A. Yes, sir.

Q. In February last, wasn't he? A. Yes, sir.

Q. And you pointed him out from the stand then, didn't you? A. I believe so.

Mr. GORDON.—It is stipulated that the witness

(Testimony of John E. Nelson.)

Williams is the same Walter Williams concerning which the stipulation was made this morning, and who made the homestead entry concerning which a stipulation was entered into this morning.

Mr. TANNAHILL.—Yes; all right. [913—583]

[**Testimony of John E. Nelson, for Complainant.**]

JOHN E. NELSON, a witness called in behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is John E. Nelson? A. Yes, sir.

Q. Where do you live, Mr. Nelson?

A. 508 Sixth Avenue.

Q. In Lewiston, Idaho? A. Yes, sir.

Q. How long have you lived at Lewiston?

A. Twelve years.

Q. Are you a married man? A. Yes, sir.

Q. What was your occupation in February, 1903?

A. Salesman for the Lewiston Mercantile Company.

Q. Do you remember taking up a timber and stone claim under the timber and stone act in 1903?

A. I have a faint recollection of it.

Q. I show you timber and stone lands sworn statement, dated February 24th, 1903, signed John E. Nelson, and ask you if that is your signature to that paper? A. Yes, sir.

Q. And whether you filed the same in the land office about the date it bears?

A. As near as I remember, yes. That is my signa-

(Testimony of John E. Nelson.)

ture, without any doubt.

Q. I show you nonmineral affidavit of the same date, and ask you if you signed that paper?

A. Yes, sir; that is my signature.

Q. I show you the testimony of John E. Nelson, given at the [914—584] final proof, May 22d, 1903, and ask you if that is your signature to that paper? A. Yes, sir.

Q. I show you the cross-examination of John E. Nelson, taken at the same time, and ask you if that is your signature? A. Yes, sir.

Q. Mr. Nelson, who first talked to you about taking up a timber claim?

Mr. TANNAHILL.—The defendants severally object to any evidence of the witness relative to taking up a timber claim, so far as it relates to bills 388 and 407, upon the ground that the entry of the witness is not involved in either of these actions.

Mr. GORDON.—Answer the question.

A. I didn't understand that.

Said question was thereupon repeated by the Reporter.

A. Why, Mr. H. R. Miller, deceased.

Q. What was Mr. Miller's business?

A. He was in the cigar business.

Q. And was he alone, or was he associated with someone? A. At that time he was alone.

Q. Did he afterwards have a partner in business?

A. Yes, sir.

Q. Who was it? A. Van Robertson.

Q. And how long after that did Mr. Robertson go

(Testimony of John E. Nelson.)

in business with him?

A. Well, I'm sure I can't remember.

Q. Well, now, what was this conversation between you and Mr. Miller with reference to taking up a timber claim?

Mr. TANNAHILL.—We object to that upon the ground that it is immaterial and hearsay, and not in the presence of the defendants or either of them.
[915—585]

Mr. GORDON.—Answer the question.

A. Well, in detail I couldn't begin to remember the conversation or what brought it about.

Q. Well, you knew he kept a cigar-store?

A. Yes, sir, I knew that.

Q. And wasn't in the timber business?

A. I knew that very well.

Q. Now, state as near as you can what he said that induced you to take up a timber claim.

A. Well, he was living up at my house at the time, and casually mentioned the fact that he anticipated taking up a claim himself, and he felt satisfied that if I wanted one he could arrange it so that I could get it, and I signified my desire to take one.

Q. And do you know with whom he made the arrangements?

A. I think it was with William Benton and Ed. Knight.

Q. Did you meet Mr. Clarence W. Robnett in this transaction?

A. I met him during the transaction, yes, sir.

Q. Did you meet him before you made your filing?

(Testimony of John E. Nelson.)

A. Yes, I think I did.

Q. And did you make any arrangements with him about the claim? A. Absolutely none.

Q. What part did he take in the transaction?

A. Well, I don't know that it was anything more than a sort of a promoter, to help things along, as far as I could see.

Q. Was there any arrangements made with him about the money that was to be used in paying for this claim?

A. Why, Mr. Miller attended to that, as far as I was concerned, because I was out on the road and had a very limited space of time in which to make any arrangements myself.

Q. Well, did you get your money from Mr. Miller for your expenses, etc.? [916—586]

A. No; I paid my own expenses. I paid all my expenses—paid the filing fees and all.

Q. Did you use your own money to make your final proof? A. No, I didn't.

Q. Now, from whom did you get that?

A. As near as I remember, it was handed to me by Mr. Miller, and who he got it from I don't know.

Q. It wasn't given to you by Robnett?

A. I can't remember as to that.

Q. Do you remember where you received that money?

A. Yes; I believe it was in the Lewiston National Bank.

Q. Now, who gave it to you there—Mr. Miller?

A. Well, I am satisfied that Mr. Miller had his

(Testimony of John E. Nelson.)

hands on the money. Who it came from I don't know.

Q. Did you and Mr. Miller go there and get it from Mr. Robnett? A. I think we did, yes, sir.

Q. And did you give him a note for it?

A. Not at that time.

Q. You didn't give any note to secure it at that time? A. Not at that time.

Q. Did you have any arrangements with Mr. Knight and Mr. Benton that you have referred to with reference to locating you? A. No, sir.

Q. Who made those arrangements for you?

A. Mr. Miller.

Q. And did you ever go to this land?

A. I presume I did. I went out in the timber and wandered around.

Q. How long was that before you made your final proof?

A. It seems to me it was fully two or three months or four months.

Q. Was it before you made your original filing—before you filed your sworn statement? [917—587]

A. Well, before I made any filings at all I went into the timber.

Q. Are you sure of that? A. Yes, sir.

Q. With whom did you go?

A. I went with Ed. Knight and Harry Miller.

Q. Did you go to this claim upon which you filed?

A. I supposed I was going to it.

Q. Now, with whom did you leave Lewiston to go to view this claim? A. I left here alone.

(Testimony of John E. Nelson.)

Q. And where did you go?

A. I went to Ahsahka.

Q. Where else?

A. And then I went to Lou. Stalneker's.

Q. Where else did you go?

A. Well, we went through Dent, and back on Swamp Creek, I think they call it, or Squaw Creek, or some creek of that nature.

Q. How far beyond Dent did you go?

A. It seems to me it was about six or seven miles.

Q. Now, wasn't that just a few days before you made your final proof?

A. Why, I really don't know what month it was in, or anything about it. It is a long time back, and I couldn't say positively. I couldn't swear to anything that occurred then.

Q. Do you remember having a conversation with Knight, in which he told you that you didn't have to see the land before you filed?

A. Indistinctly I think I remember something about that.

Q. Well, now, what is your best recollection?

A. I couldn't swear to anything.

Q. What is your best recollection?

A. Well, I was told that by somebody, but just who it was I couldn't say positively. [918—588]

Q. Now, don't you remember that you had some discussion with Mr. Knight about filing on this land without having seen it; that you would have to swear to that?

(Testimony of John E. Nelson.)

A. I have a faint recollection of that occurring, yes.

Q. And that you would have to swear that you had been on the land, and that he told you that was all right; that people were doing it every day?

A. Yes, I remember something to that effect.

Q. And that was before you filed?

A. It was. Well, I don't remember—I couldn't swear to anything in that case.

Q. I read from the sworn statement that you filed in the land office, which you have identified, and ask you whether or not you and Mr. Knight went over this question, or this part of the affidavit, and discussed the propriety of you signing it: "That I have personally examined said land, and from my personal knowledge state that said land is unfit for cultivation," etc. I will ask you if you remember whether or not you balked at that, when you had to swear to that in the land office?

A. Yes, I made a little balk on it, I remember that.

Q. And that Mr. Knight eased your conscience a little bit by telling you that everybody was doing it, and it was not necessary—

A. Somebody said, "Oh, that's all right." (Whispering.)

Q. And who was at the land office with you at that time?

A. H. R. Miller, Joel Benton and Ed. Knight, and that was all.

Q. Then wasn't it a month or two after that that you went up to look at the land—went up in that di-

(Testimony of John E. Nelson.)

rection? A. Yes, I think it was.

Q. How far above Dent did you travel toward this land? A. Up the river?

Q. Yes.

A. Oh, we didn't go very far up the river. We went up the [919—589] river about half a mile, and then turned and went back into the timber.

Q. How far did you go back into the timber?

A. Well, it seemed to me it was all of six or seven miles.

Q. Didn't you go only a mile and a half from Dent altogether? A. A mile and a half from Dent?

Q. Yes.

A. Well, it was a long mile and a half, if I remember.

Q. Well, I want to find out how far you did go, and how far you really went, Mr. Nelson, that's all.

A. Well, I really couldn't say positively. Distance is deceptive in the timber.

Q. What is your best recollection at this time as to how far you went beyond Dent?

A. Well, from the way my legs felt, I walked fully six or seven miles anyway, wandering around.

Q. Who prepared your sworn statement and other filing papers that you filed in the land office?

A. There was an attorney that had an office right next to the receiver of the land office.

Q. Mr. Cox?

A. Cox—yes, that was the name, I think.

Q. You don't remember fully, do you?

A. Oh, it is vague.

(Testimony of John E. Nelson.)

Q. Now, did you pay him for that service?

A. I did, sir.

Q. How much did you pay him?

A. I am not sure whether it was \$2.00 or \$1.50.

Q. Did you pay any expenses?

A. I did, sir; I paid all my expenses.

Q. Of going to the land and back?

A. Yes, sir—paid all my expenses. [920—590]

Q. And the fee in the land office?

A. \$14.00, I think.

Q. Did you pay it your own self?

A. Absolutely my own money.

Q. Was it money advanced to you for that purpose?
A. No, sir.

Q. And did you say that both Mr. Benton and Mr. Knight went to the land with you?
A. No, sir.

Q. Which one went?
A. Mr. Benton.

Q. And did you pay him for his services?

A. Yes; I think he got \$200.00 out of it.

Q. Well, I know; but did you pay him anything?

A. I didn't pay him myself, no.

Q. And you didn't give it to anybody to pay him, did you?
A. No, sir.

Q. Mr. Robnett paid that, didn't he?

A. I don't think he did. If he did it was unknown to me.

Q. Now, who notified you of the time that you were to make your final proof?

A. Why, I couldn't say. Do you mean who came and informed me to get ready?

Q. Yes.

(Testimony of John E. Nelson.)

A. Why, a young man by the name of Varney. I think, as near as I can remember it.

Q. Well, what did you have to do to get ready?

A. Well, I had to let the folks know—the Mercantile Company know—that I wanted a few days off to go out in the timber.

Q. That was just before your final proof?

A. Yes, sir.

Q. And then you did go up in the timber, and returned? [921—591] A. Yes, sir.

Q. And how long were you back in Lewiston before you made your proof and paid the purchase price of the land?

A. Not over two days—two and a half or three days.

Q. And that was the first time you had ever been to the land office?

A. Yes, I am sure it was. I was only up there once.

Q. And when Mr. Miller first spoke with you about taking up the claim, was there anything said then about where you were to get the money to make your proof?

A. No; he said he could arrange for that all right.

Q. And did you go to see him again when the time came to make proof; or did he come to you?

A. Why, he was stopping at my house at the time—living with me.

Q. And you and he went to the Lewiston National Bank and got the money? A. Yes, sir.

Q. How much did you get?

(Testimony of John E. Nelson.)

A. I got \$400.00, as near as I remember, in gold.

Q. And you didn't give any note at that time?

A. No, sir.

Q. And when was that that you received that money? Was that the day you made your proof?

A. Yes, sir.

Q. And did you go directly from there with that money to the land office? A. Yes, sir.

Q. To make the proof with it? A. Yes, sir.

Q. Now, was the matter discussed at the time that you received that money, as to where you should say you got it, when you went to the [922—592] land office? A. No—only that it was mine.

Q. And who told you to say that?

A. I don't remember.

Q. Well, who was at the bank with you besides Mr. Miller?

A. Ed. Knight I think was there, and Will Benton was there, too.

Q. The four of you went there together?

A. Well, we walked from Miller's cigar-store to the bank together. There was three of us.

Q. Well, who was in the bank with you?

A. Who was in the bank with me?

Q. Yes.

A. Well, I know Mr. Miller was there, and myself, and I think Mr. Knight was there at the time.

Q. And Mr. Robnett?

A. Mr. Robnett was behind the counter.

Q. He was the man you went to see?

A. Well, I didn't go to see anybody, particularly.

(Testimony of John E. Nelson.)

Q. You went there to get the money?

A. I went there to get the money.

Q. And you saw Mr. Robnett, and you got the money from him; is that correct?

A. Well, I don't know who Miller got the money from. It was handed out to him, and he handed it to me.

Q. Well, you were standing right there, weren't you? A. I was standing right there.

Q. And didn't you talk to Mr. Robnett?

A. I said a word or two to Mr. Robnett, yes.

Q. And wasn't it Robnett who handed the money out to Miller?

A. Well, I don't remember who handed it out to him. I wouldn't say that Mr. Robnett handed it out to him. There was another man in the cage with him at the time. [923—593]

Q. Well, it was one of them?

A. It was one or the other.

Q. It was one of the four that you have named that suggested that you should say at the land office that it was your own money?

A. It wasn't a direct suggestion that I can remember; but there was enough so that it percolated through my head that I was to say it was mine.

Q. And didn't they have a set of papers there, pointing out the questions that would have to be answered?

A. No. The first I saw of them was up in Mr. Cox's office.

Q. Did you go over them there?

(Testimony of John E. Nelson.)

A. Just in a casual way.

Q. I mean now the final proof papers—the ones where you are interrogated when you made final proof?

A. No. That was filled out in the office of Mr. Cox.

Q. And you took them to the land office?

A. Yes, sir.

Q. I am not speaking about your first papers; I am speaking about the last papers you filed, when you paid the \$400.00. Now, were they filled out in the land office, or at somebody else's office?

A. They were filled out in the land office, I believe.

Q. And you saw a copy of them before you went there, though, didn't you?

A. By George, I am a blank as far as that goes. I don't really remember it. It don't leave that impression on me at all.

Q. You remember these questions being asked you when you were making your final proof, Mr. Nelson, by Mr. West or any other officer in there, when you answered these questions: "What do you expect to do with this land and the lumber on it when you get title to it?" "Answer. Hold it." Do you remember it? A. All of which I do.

Q. "Question. Has any person offered to purchase this land [924—594] after you acquire title? If so who, and for what amount?" "Answer. No." Do you remember that question and answer?

A. Yes, sir—and that was true, too.

Q. "Question. Where is the nearest and best market for the timber on the land at the present

(Testimony of John E. Nelson.)

time?" "Answer. Lewiston, Idaho." Do you remember that question and answer?

A. I don't remember that answer.

Q. "Question. Did you pay out of your own individual funds all the expenses in connection with making this filing, and do you expect to pay for the land with your own money?" "Answer. Yes, sir." Do you remember that answer being made?

A. Yes, sir, I remember that.

Q. The next question: "Where did you get the money with which to pay for this land, and how long have you had it in your actual possession?" "Answer. Earned it in my trade. About a year and a half." Do you remember that question and answer?

A. Yes, I remember that.

Q. It wasn't true, was it?

A. Well, I figured that my worldly goods were a great deal more than that, and if I didn't have it in spot cash I was certainly good for that much.

Q. Was that argued out to you before you went there?

A. No; there was nothing said about that.

Q. It was just a spontaneous conclusion you came to when you saw that question? A. Yes.

Q. And the very money you had paid in the land office you had obtained at the bank a few minutes before? A. The actual cash, yes.

Q. Now, how long after you made your final proof did you give security for the money you had gotten?

A. Well, as I remember it was the same day. I went right over [925—595] to Mr. Nickerson's

(Testimony of John E. Nelson.)

office, I believe, and signed up the papers.

Q. A mortgage? A. A mortgage and note.

Q. And do you know to whom the mortgage ran?

A. Why, it was Mrs. Thatcher—Curtis Thatcher's mother.

Q. And did you afterwards sell this land?

A. I sold it here about a year and a half ago.

Q. To whom? A. To Curtis Thatcher.

Q. For how much?

A. I got \$60.00 in cash out of it.

Q. That is all you got out of it? A. Yes, sir.

Q. Who conducted that transaction for you?

A. Mr. Butler—Attorney Butler.

Q. When you took up this timber claim did you have any understanding as to how much you were to make out of it?

A. Well, no. I anticipated I would get a couple of thousand out of it. I knew people that had gotten \$1500.00 or \$2,000.00 out of their claims, and I anticipated a similar amount.

Q. Will you name some of those people that you knew that had sold their claims at that time?

A. Well, there was Austin Justice.

Q. To whom did he sell?

A. I haven't the slightest idea—some land company.

Q. Who else?

A. And there was a brother in law of his, I disremember his name, though, and as near as I remember a man by the name of Forbes, living up in that vicinity.

(Testimony of John E. Nelson.)

Q. You didn't know to whom they had sold, though? A. I did not.

Q. Didn't you have any arrangement with Mr. Robnett with reference [926—596] to selling this claim? A. I gave Mr. Robnett an option on it.

Q. And when was that?

A. Well, that was a year or so after I had filed on it—made final proof.

Q. And when was the option? What were you to get for it?

A. Well, he was to sell it at the best figure he could possibly get, and he was to get his commission out of it.

Q. Wasn't the arrangement with Mr. Robnett that you were to get \$500.00 over and above what it cost you?

A. There was no set amount—there was no given amount. I would have willingly sold.

Q. And wasn't that arrangement made before you ever filed on the land?

A. No, sir, absolutely not. There was no arrangement at all.

Mr. GORDON.—We offer in evidence the timber and stone lands sworn statement of John E. Nelson, dated February 24th, 1903, the nonmineral affidavit of John E. Nelson, the testimony of John E. Nelson given on final proof, the cross-examination of John E. Nelson given on final proof, all of which papers the witness Nelson has identified, the testimony of the witnesses at final proof, and the cross-examination of them, the notice of publication, the receiver's

(Testimony of John E. Nelson.)

receipt and the register's certificate, dated May 22d, 1903, a certified copy of the patent issued to John E. Nelson, dated August 3d, 1904, all relating to the entry of the northeast quarter of section 24, township 39 north, of range 2 east, Boise meridian.

Mr. TANNAHILL.—The defendants severally object to each and all of the documents offered in evidence, in so far as they relate to bills No. 388 and 407, upon the ground that they are irrelevant and immaterial, the entry not being involved in either of these actions. And the defendants severally object to the final proof papers being admitted in evidence in support of either of the actions, and especially the testimony [927—597] of the claimant, John E. Nelson, the cross-examination of the claimant, John E. Nelson, the testimony of the witness Edward L. Knight, the cross-examination of the witness Edward L. Knight, the testimony of the witness William B. Benton, the cross-examination of the witness William B. Benton, the affidavit of Edward L. Knight, and the proof of publication; upon the ground that the papers relate to the final proof, and matters occurring after the filing of the sworn statement are irrelevant and immaterial. The defendants severally waive any further identification of the papers offered.

Said documents were thereupon marked by the Reporter as Exhibits 24, 24A, 24B, 24C, 24D, 24E, 24F, 24G, 24H, 24I, 24J, 24K, 24L, 24M, and 24N.

Mr. GORDON.—Q. Did I understand you to say that some time after you made your proof you went

(Testimony of John E. Nelson.)

to Mr. Cox's office and signed a note for the money that you had received?

A. No, sir; I didn't go to Mr. Cox's office.

Q. Well, whose office?

A. Nickerson—John Nickerson.

Q. And you gave a note—to whom was it? Curtis Thatcher?

A. Curtis Thatcher. No—it was Mrs. Thatcher—his mother. It wasn't Curtis Thatcher; it was Mrs. Thatcher.

Q. And that is the only note you gave in the transaction?

A. That is the only one I remember of giving.

Q. And subsequently you made a deed to Mrs. Thatcher? A. Yes, sir.

Q. Did you ever know Mr. Curtis Thatcher in this transaction at all? Did you ever get any money from him? A. At the time of the filing, or since?

Q. Any time—except the money you got when you sold your land? A. No, sir.

Q. And did you get the \$70.00 that you referred to from— [928—598] A. \$60.00.

Q. —\$60.00, from Curtis Thatcher?

A. Yes, sir, I got a check from him.

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mr. Nelson, did you have any contract or agreement that you would sell your land to anyone, prior to the time you filed your sworn statement?

A. No, sir.

Q. Or prior to the time you made your final proof?

(Testimony of John E. Nelson.)

A. No, sir.

Q. How long after you filed your sworn statement and made your final proof was it that you did sell your land? A. How long afterwards?

Q. Yes?

A. Well, it must have been pretty close to six years.

Q. You paid taxes on it during all that time, did you? A. No, I didn't pay taxes on it.

Q. Did you give anyone else an option on it besides Mr. Robnett?

A. Yes; I gave an option to a partner of Joe Payne's—Washburn.

Q. Washburn? A. Mr. Washburn.

Q. Did you give an option to anyone else?

A. Not that I remember of.

Q. Did you ever have any talk with either Kester, Kettenbach or Dwyer about it? A. Never.

Q. You had no contract or agreement with them in any way in relation to the claim?

A. I never knew them in the transaction at all.

Q. Was there any contract or agreement that you would sell your land to either Curtis Thatcher or Eliza W. Thatcher, prior to the time [929—599] you filed your sworn statement? A. No, sir.

Q. Or prior to the time you made your final proof?

A. There was nothing said about it at all.

Q. There was no understanding to that effect?

A. No.

Q. Then the affidavit you made at the time you filed your sworn statement, that "I have made no

(Testimony of John E. Nelson.)

other application under said acts; that I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit, and that I have not, directly or indirectly, made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself," that affidavit was true at the time you made it, was it?

A. I have made no contract with anybody. In fact, I haven't mentioned the subject of selling, because I expected to hold it a reasonable length of time in order to realize something, and get a good figure for the same.

Q. Then the affidavit was true? A. Yes, sir.

Q. True at the time you made it? A. Yes, sir.

Q. And true at the time you made final proof?

A. Yes, sir.

Q. And it is still true?

A. Yes, sir. There has been no agreement made at all to sell.

Redirect Examination.

(By Mr. GORDON.)

Q. You never paid any interest on that note, either? It was all fixed up at final settlement, was it? [930—600]

A. It was fixed up at final settlement. I had been notified several times that the interest was due.

Q. By whom were you notified?

(Testimony of John E. Nelson.)

A. By Curtis Thatcher.

At this time a recess was taken until two o'clock
P. M. [931—601]

At two o'clock, P. M., the hearing was resumed.

[Testimony of Charles W. Taylor, for Complainant.]

CHARLES W. TAYLOR, a witness called on behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Charles W. Taylor?

A. Charles W. Taylor.

Q. Where do you reside, Mr. Taylor?

A. Now, I am fifteen miles from Asotin, up on the flat.

Q. Where did you reside in April, 1904?

A. I was in the Cloverland country then.

Q. Is that in Washington? A. Yes, sir.

Q. Are you a brother of Edgar J. Taylor?

A. Yes, sir.

Q. Were you married in 1904? A. No, sir.

Q. Are you married now? A. No, sir, not yet.

Q. Did you know Jackson O'Keefe?

A. Yes, sir.

Q. Was that his name, or did he have a middle initial?

A. I don't know whether he had a middle initial or not; J. O'Keefe is all I know.

Q. Was he a relative of yours? A. Uncle.

Q. What business was he engaged in in the fall of 1903 and the spring of 1904?

(Testimony of Charles W. Taylor.)

A. He was in the irrigation business. [932—602]

Q. Was he connected with some company?

A. Him and Mr. Kester was together.

Q. What Mr. Kester? A. George.

Q. George H. Kester? A. Yes, sir.

Q. Now, I say, were they connected in some company, or were they just a partnership?

A. Just a partnership, I guess, was the way I understood it.

Q. You took up a timber claim in April, 1904, did you not?

A. Yes, sir, I guess it was somewheres along there.

Q. I show you timber and stone land sworn statement, dated April 25, 1904, signed Charles W. Taylor, and ask you if you signed that paper and filed the same in the land office about the date it bears? A. Yes, sir.

Q. I show you the nonmineral affidavit of the same date, signed Charles W. Taylor. Is that your signature to that paper? A. Yes, sir.

Q. I show you the testimony of Charles W. Taylor, given on final proof, July 11, 1904, and ask you if that is your signature to that paper? A. Yes, sir.

Q. I show you the cross-examination of Charles W. Taylor, taken at the same time. Is that your signature to that paper? A. Yes, sir.

Q. And all those papers were filed in the land office at Lewiston, were they not? A. Yes, sir.

Q. Mr. Taylor, who first spoke to you about taking up a timber claim?

Mr. TANNAHILL.—The defendants severally

(Testimony of Charles W. Taylor.)

object to any evidence of the witness relative to his taking up a timber claim, in so far as it [933—603] relates to bills No. 406 and 407, on the ground that it is irrelevant and immaterial, his entry not being involved in those particular actions.

Thereupon, upon request, the last question was repeated by the stenographer.

A. Mr. O'Keefe.

Q. Mr. Jackson O'Keefe?

A. Jackson O'Keefe, yes, sir.

Q. How long was that before you did take up a timber claim?

A. Well, I don't remember exactly. It wasn't such a great long time though; I don't remember just how long it was.

Q. Wasn't it the fall before you took it up in the following spring? A. It was in the fall, I think.

Q. What did he say about taking up timber claims?

Mr. TANNAHILL.—We object to that, on the ground that it calls for a statement of a party who is now deceased, not a party to the action, and a conversation not in the presence of either of the defendants, and they can in no way be bound by the same.

Thereupon, upon request, the last question was repeated by the stenographer.

A. He just simply asked me if I didn't want to take up a timber claim. He said he was going to take up one, and wanted me to go with him, something to that effect.

(Testimony of Charles W. Taylor.)

Q. Did he say anybody else was interested with him in taking up timber claims?

A. No, sir, not at that time he didn't.

Q. Well, what else was said about taking up a timber claim? A. At that time?

Q. Yes.

A. He wanted me to tell—to see my brother.

Q. That was Edgar J. Taylor? [934—604]

A. Edgar J. Taylor.

Q. Who else?

A. Joseph H. Prentice, and Edward Dammarel.

Q. Where were you employed at that time?

A. I was working for O'Keefe and Kester at that time.

Q. George H. Kester? A. Yes, sir.

Q. Who were the Mr. Prentice you have mentioned, and Mr. Dammarel employed by?

A. Well, I don't think they was—I don't know—I believe—I am not positive, but I believe Mr. Dammarel was working in a store at Cloverland, but I am not positive of it; I don't know whether he was working for anybody at that time.

Q. Where was your brother working?

A. I don't remember whether he was working down town or up on the flat somewhere.

Q. Was he employed by Mr. Kester and Mr. O'Keefe?

A. I don't think he was at that time; he might have been, but I don't believe he was.

Q. What else was said in that conversation about taking up a timber claim?

(Testimony of Charles W. Taylor.)

A. Well, I don't know as there was anything else said more than he just wanted me to go up and see these parties.

Q. Who was to furnish the expenses and the money to purchase the claim?

A. He was to let me have the money.

Q. What were you to do with your claim after you had made proof on it?

A. At the time he spoke to me about that, the first conversation he had with me about he would furnish me the money, he told me that he would buy the claim of me. [935—605]

Q. How much was he to give you, over and above the expenses? A. He was to give me \$150.00.

Q. That was the first conversation you had with him about timber claims? A. Yes, sir.

Q. What were you to tell Mr. Dammarell and Mr. Prentice and your brother when you were to see them about taking up a timber claim?

A. I was to tell them the same thing he told me.

Q. Did you see them? A. Yes, sir.

Q. Did you tell them the same thing?

A. I think I did, as near as I could remember it.

Q. Now, did Mr. O'Keefe later than that tell you that somebody was going to take up claims with him, or something to that effect?

A. He did later, yes, when we started for the timber.

Q. What did he say?

A. He said that George Kester and some more of them was taking up claims.

(Testimony of Charles W. Taylor.)

Q. Was that the way he said it?

A. Somewheres like that, as near as I can remember now.

Q. Did he tell you that Kester was taking up claims for himself, or that he was taking other people in there to take claims up for him?

Mr. TANNAHILL.—We object to that as leading and suggestive, and calling for the conclusion of the witness.

A. He said that George Kester was going in there with a crowd to take up claims; I don't remember whether he said he was taking them up for himself, or just how he did say it.

Q. Now, how long after that conversation did you start for the timber? Oh—did you agree to take that timber claim up in compliance with those arrangements?

A. Yes, sir.

Q. With Mr. O'Keefe? [936—606]

A. Yes, sir.

Q. And how long before was that, before you started into the timber?

A. Well, I don't remember exactly; it was somewheres in the neighborhood of two or three weeks though.

Q. And then you did go to inspect this timber, did you?

A. Yes, sir.

Q. And who went with you? A. From home?

Q. Yes, from home.

A. There was Mr. O'Keefe, and myself, and my brother Edgar J. Taylor, and Joseph Prentice, and Ed. Dammarell.

(Testimony of Charles W. Taylor.)

Q. Did you meet Mr. O'Keefe at the depot?

A. Yes, sir, I met him there at the depot at Lewiston.

Q. Where did you start from?

A. We left,—we came from Asotin.

Q. To Lewiston? A. To Lewiston, yes, sir.

Q. Did all of you come together?

A. No. Mr. O'Keefe, Mr. Dammarell, and Mr. Prentice came down in the morning, and my brother and I didn't come down until after noon.

Q. Did you join them here then? A. Yes, sir.

Q. Did you start for the timber that afternoon?

A. Yes, sir, that day.

Q. Where did you go? A. To Orofino.

Q. Did you go by train to Orofino?

A. Yes, sir.

Q. Who paid the expenses of that trip?

A. Mr. O'Keefe.

Q. Did he buy you a round trip ticket? [937—
607] A. No, sir.

Q. When you got to Orofino did you go the rest of the way by train?

A. No, sir, we went horseback, some of them went horseback, two of the boys went horseback, and the rest of us went in a hack.

Q. How far did you go?

A. Went to Pierce City that way.

Q. How far is that from Orofino?

A. About thirty miles, or thirty-five, something like that, I should judge.

Q. Did you go still further on then?

(Testimony of Charles W. Taylor.)

A. Yes, sir.

Q. Well, how much further did you go?

A. Well, I don't know how far they called it from there,—seven or eight or ten miles.

Q. How did you traverse that route?

A. Horseback.

Q. Who arranged for the carriages and the horses for the party on that trip?

A. Mr. O'Keefe and I went and spoke for the rigs ourselves.

Q. Did you pay any of the expense of the rigs?

A. No, sir.

Q. Not even for your own? A. No, sir.

Q. I mean not even your own share?

A. No, sir.

Q. How long were you in going from Lewiston and returning to Lewiston, how long were you away?

A. We was gone two or three days; I don't remember now just how long we was gone.

Q. And you paid none of that expense whatever of your trip? A. No, sir. [938—608]

Q. Then did you return to your home at Asotin?

A. Yes, sir.

Q. And you did not file for several months later?

A. It was some time; I don't remember just how long it was,—some time afterwards.

Q. Well, you went to look at the land some time the latter part of October, did you not, some time in October?

A. Just before the fair started here that fall; I don't remember whether it was in October, I think

(Testimony of Charles W. Taylor.)

it was though.

Q. And you filed on this claim in the following March? A. Yes, sir.

Q. You remember that? A. Yes, sir.

Q. Now, who notified you of the time to file on the claim? A. Mr. O'Keefe, I think.

Q. Before we get to that though, I will ask you who located you on the claim? Who went over the claim with you? A. Mr. William Dwyer.

Q. The gentleman present? A. Yes, sir.

Q. Did you have any arrangement with him about paying a locating fee?

A. Not at that time; no, sir.

Q. Did you ever have any arrangement with him?

A. I never talked with him at all until after I came to Lewiston.

Q. And you came to Lewiston to make your filing?

A. Yes, sir.

Q. Do you remember who advised you? Did you say Mr. O'Keefe advised you of the time to come to Lewiston to make your filing?

A. I think he was the party.

Q. And how long were you in Lewiston before you filed?

A. I was here three or four days, I think, if I remember right, [939—609] before I got in, pretty near a week, something like that.

Q. Did you stand in a line at the land office?

A. Yes, sir.

Q. How long were you in that line?

A. Between three and four days and a week.

(Testimony of Charles W. Taylor.)

Q. Do you remember what number of place you held in the line?

A. No, I don't remember now.

Q. As near as you can remember.

A. Ten or twelve.

Q. Who was in front of you, do you remember?

A. I don't remember.

Q. Who stood immediately behind you?

A. I think it was my brother, but I am not positive.

Q. Who prepared your sworn statement and other papers you filed in the land office.

A. Mr. O'Keefe; I suppose he did, he handed them to me.

Q. He brought them to you? A. Yes, sir.

Q. Where were you when he brought them to you in the line?

A. Up in the hall there somewhere; I don't remember whether I was right in line or not.

Q. To you while you were in line? A. Yes, sir.

Q. Waiting to get in the land office?

A. Yes, sir.

Q. You paid a filing fee at the land office when you filed, did you? A. Yes, sir.

Q. Where did you get the money for that fee?

A. I got that from Mr. O'Keefe.

Q. He gave it to you? A. Yes, sir. [940—610]

Q. You didn't have to ask him for it, did you?

A. No, sir.

Q. He brought it to you and gave it to you for that purpose? A. Yes, sir.

(Testimony of Charles W. Taylor.)

Q. And after you filed, in the course of a couple of months it came time to make final proof, is that correct? A. Something like that, yes, sir.

Q. Who notified you of the time to make final proof?

A. Well, there was a paper published, either when the time to make final proof or the time to file, I ain't sure which, but I believe the paper stated when we was to make final proof, if I am not mistaken.

Q. Then you came down to the land office, did you, again? A. Yes, sir.

Q. Did anyone come with you at that time?

A. Yes, sir, the same crowd that had been with me all the time.

Q. That was Mr. Prentice, and Mr. Dammarell, and your brother? A. Yes, sir.

Q. Did you see Mr. O'Keefe on that occasion?

A. Yes, sir.

Q. Do you remember how much money you paid in the land office when you made your proof?

A. I don't remember now just the exact amount, no.

Q. Wasn't it about \$400.00?

A. Somewheres, four hundred and something.

Q. Where did you get that money?

A. From Mr. O'Keefe.

Q. Did you have to ask him for it, or did he bring it to you? A. I hadn't asked him for it at all.

Q. And you paid that money into the land office?

A. Yes, sir.

Q. Now, was there any discussion at that time

(Testimony of Charles W. Taylor.)

between you and Mr. [941—611] O'Keefe or anyone else as to where you should say you received that money, what you should say about it?

A. No, sir.

Q. Did you go over the final proof papers with anyone, the questions contained in there, as to what you should swear to on that occasion?

A. I don't remember that I did.

Q. Now, did I ask you what you were to do with this land, in your first conversation with Mr. O'Keefe, what you were to do with this land to make that \$150.00?

A. What I was to do with it?

Q. Yes. A. I was to sell it to him.

Q. Were you to sell it to him or to someone else?

A. Well, he was the one I was dealing with; he never told me about selling to,—never mentioned nobody else's name about me selling it to.

Q. Did he give you to understand that he was acting for someone else?

A. No, sir, not then at all.

Q. Did he later?

A. Later on he told me he couldn't do what he had agreed to.

Q. Now we will get to that after while. Did he tell you he was carrying on that transaction for Mr. Kester?

A. No, sir, he didn't say it in that way; that him and Mr. Kester was taking up this land.

Q. Was that the way he said it?

A. Something like that.

Q. And that you were to convey it to him to get the \$150.00?

A. Something like that.

(Testimony of Charles W. Taylor.)

Q. Do you remember that when you came down to the land office and [942—612] made proof that you swore to certain statements?

A. Yes, sir, I think I did.

Q. Now do you remember this question being asked you: "Did you pay out of your own individual funds all the expenses in connection with making this filing, and do you expect to pay for the land with your own money?" "Answer. Yes. Yes."

A. Yes, sir.

Q. Was that true or was it false?

A. Well, I had borrowed the money and given my note for it.

Q. I know, but I asked you was that true or was it false?

A. About me paying for it with my own money?

Q. Yes.

A. Well, I don't know hardly how you would call it; I gave my note for the money.

Q. How you borrowed the money, or had he just furnished you the money to take the claim up for him?

A. Well, he let me have the money and took my note for it.

Q. I know, but answer my question.

A. And I was to sell it to him after I got the patent for it.

Q. But that arrangement was made before you ever went to see the land, is that correct?

A. Yes, sir, but he changed that though, contradicted himself, and said he couldn't do that.

(Testimony of Charles W. Taylor.)

Q. When did he make that statement?

A. That he couldn't—?

Q. That he couldn't do it.

A. When we was on the road to the timber.

Q. Did he tell you who had advised him that it couldn't be done that way? A. Yes, sir.

Q. Who? A. George Kester. [943—613]

Q. But you proceeded on the same old understanding or arrangement did you not?

A. Well, sir, after I got my receiver's receipt I turned it over to him.

Q. I mean you kept right on taking up the timber just the same as though he hadn't said that, didn't you?

A. Yes, sir, went right on and took up the timber.

Q. And you intended to convey to him just the same? A. Yes, sir.

Q. Now, what did he tell you when he made that statement? What is the exact language, as near as you can remember it?

A. That last question I just answered about—?

Q. The statement he made to you on the way to the timber.

A. He said that he couldn't,—he said,—he told us that he would give us \$150.00 for them after we had proved up.

Q. Give you \$150.00 for what, did he say?

A. For the claims, and he said he couldn't do that.

Q. Did he say it just that way?

A. Well, as near as I remember it, that George told him he couldn't make no agreement of that kind,

(Testimony of Charles W. Taylor.)

or something to that effect.

Q. Do you remember this question being asked you at the land office when you made your proof, question 17: "Where did you get the money with which to pay for this land and how long have you had the same in your actual possession?" "Answer. I earned a part of it and borrowed the balance. About two weeks." A. Yes, sir.

Q. Was that true or not?

A. That is the question I answered.

Q. That wasn't correct though, was it?

A. No, sir, I had got the money that day.

Q. And you had gotten it from Mr. O'Keefe?
[944—614] A. Yes, sir.

Q. Did you see where Mr. O'Keefe got the money from? A. No, sir, I didn't see where he got it.

Q. Were you with him when he received it?

A. No, sir.

Q. And you took the very money he gave you and paid it into the land office and made your proof with it, did you? A. Yes, sir.

Q. Who told you to make that statement, if anyone? A. He told me that himself.

Q. They gave you a receipt for the money you paid in the land office, did they not?

A. I got a receipt from the land office that day; yes.

Q. What did you do with that receipt?

A. I laid it home some place.

Q. I know, but you haven't had it home all the time, have you? A. No, sir.

(Testimony of Charles W. Taylor.)

Q. Tell us what you did with it the day you received it.

A. The day I received it I took it home with me. A couple of days afterwards, either the next day or the second day, I turned it over to Mr. O'Keefe.

Q. Did he bring it to you again? A. Yes, sir.

Q. When was that?

A. Well, I don't remember just when it was; it was the first time that there was any inspectors around,—I think it was O'Fallon—

Q. And Goodwin? A. Goodwin.

Q. Did Mr. O'Keefe come to see you?

A. He came by my place where I was living in town and told me them parties was around and he would hand it back to me.

Q. What did he say when he gave it back to you?
[945—615]

A. He told me to keep it until that thing was settled.

Q. And what further did he say?

A. He said, I have an idea, that it would look as though I still owned the claim yet, or something to that effect.

Q. And you had already conveyed the claim, hadn't you? A. Yes, sir.

Q. And did he tell you what to tell the inspectors if they came to see you?

A. He told me to tell them I had my receipt and the claim was mine.

Q. When you made him a deed, when you made a deed to this claim, was anything said about recording

(Testimony of Charles W. Taylor.)

the deed? A. Yes, sir.

Q. What was said?

A. He said he wouldn't record it until the patent come from the land office, something like that.

Q. Who said that? A. Mr. O'Keefe.

Q. Now, did you get your \$150.00? A. Yes, sir.

Q. When did you get that? The day you made proof? A. A couple of days afterwards.

Q. Who gave it to you? A. Mr. O'Keefe.

Q. Did you make the deed the same day?

A. The day I got the \$150.00? Yes, sir.

Q. Do you know to whom the deed ran, who the grantee in the deed was?

A. Mr. O'Keefe, if I remember right.

Q. Did you ever make more than the one deed to that piece of property? A. No, sir.

Q. Now, state what was said when you made the deed with reference [946—616] to the transaction?

A. About all that was said, he said he wouldn't record it until after the patents came from the land office.

Q. Where was the deed made and signed?

A. In Mr. Bailey's office at Asotin, an attorney there.

Q. Was Mr. O'Keefe there? A. Yes, sir.

Q. State what was said. Did he just take you down there and you signed the deed, or was any arrangements made, any talk about price or anything of the kind when you made that deed? A. No, sir.

Q. You just went down there and made the deed

(Testimony of Charles W. Taylor.)

and he gave you \$150.00?

A. He didn't give me the money there; he gave it to me when we went to his office.

Q. I mean about the same time. A. Yes, sir.

Q. There wasn't any dickering about price or anything of that kind?

Mr. TANNAHILL.—We object to it as leading and suggestive.

Mr. GORDON.—Q. Was there? A. No, sir.

Q. Did you ever talk to Mr. George Kester about this timber claim? A. No, sir.

Q. Or Mr. William Kettenbach? A. No, sir.

Q. Now, when was anything said about paying a locating fee?

A. Well, I think, if I ain't mistaken, Mr. O'Keefe told us either on the road to the timber or when we came back from the timber, I am not positive.

Q. What was said?

A. He said we would have to pay \$100.00 location fee.

Q. When did you pay that location fee? [947—617] A. The day we proved up, I think.

Q. To whom did you pay it?

A. Paid it to Mr. William Dwyer.

Q. From whom did you get the money to pay that?

A. Mr. O'Keefe.

Q. Did you get that at the same time you got the money to make proof?

A. No, I think we got that first; I am not positive though.

Q. Was it the same day?

(Testimony of Charles W. Taylor.)

A. I think it was; I am not sure.

Q. Did you ask him for it? A. No, sir.

Q. Now, state the transaction, will you? State what he said and did.

A. He just handed me \$100.00 and told me to pay that to the locator; that was all there was said.

Q. Do you remember what the denomination of the money was that he gave you? A. It was a bill.

Q. What kind of a bill?

A. A hundred dollar bill.

Q. Was it a new bill or an old bill?

A. It was a new bill.

Q. A brand new bill?

A. Yes, sir, I think it was; it looked like it.

Q. Had it ever been folded?

A. I don't remember whether it had or not.

Q. And you gave that to Mr. Dwyer?

A. Yes, sir.

Q. At the time this money was given to you, did you give any note or any other evidence of indebtedness? A. Nothing but just a note. [948—618]

Q. When was that?

A. That was signed up the day we got the money, I think, a joint note, my brother and me together.

Q. Was that before or after proof?

A. I don't remember; it seems to me like it was the day that—

Q. I mean, if it was the same day was it before or after proof on the same day.

A. Before, I think; I am not positive though that it was the same day.

(Testimony of Charles W. Taylor.)

Q. Now, do you remember of testifying at the trial of these defendants Kester, Kettenbach and Dwyer, at Boise, in February of this year? A. Yes, sir.

Q. And do you remember, before going down to that trial, whether or not you had ever read the record of your testimony in the former trials of Kester, Kettenbach and Dwyer?

A. I read a part of it.

Q. Where did you get that testimony?

A. From the prosecuting attorney at home.

Q. What is his name? A. Shaughnessy.

Q. Where did you get it, and state the circumstances of your getting it.

A. He handed it to me one day and told me to read it.

Q. Is he the law partner of Mr. Tannahill?

A. I think he is.

Q. And how far from where you live did Mr. Shaughnessy live?

A. Mr. Shaughnessy lives over here at Clarkston, I think, but at that time I was living four mile and a half from town.

Q. Did he bring it out to your place?

A. Yes, sir. He was going by there, him and the deputy sheriff, somewhere, and I was ready to go off myself, and they went one road and [949—619] I went the other.

Q. Did he make any statement when he handed it to you?

A. Just handed it to me and told me to read it, and I told him I would if I had time.

(Testimony of Charles W. Taylor.)

Q. You did read it, didn't you?

A. I didn't read it all; I read part of it.

Q. Did you finish it when you got down to my office in Boise later?

A. No, sir; I had the opportunity, but—

Q. I will ask you whether or not you proceeded in the matter of taking up this claim and disposing of it just the same as you had your understanding and arrangement with O'Keefe the first time you talked with him? A. Yes, sir.

Q. And the second statement of Mr. O'Keefe's, on the way to the timber, that he couldn't make an agreement, did that affect your understanding as to what was to become of the claim in any way?

A. There was nothing more said about it at all.

Q. I say did that affect your understanding as to the first arrangement you had with him?

A. Well, I considered it all off then for the time being, that is, considered that there was no obligation then at that time; that is the thought I gave it.

Q. You didn't have any money to buy a timber claim, did you? A. No.

Q. And there never was another word said to you about buying that claim, was there? A. No, sir.

Q. And when he gave you the money you just turned the final receipt over to him, is that correct?

A. Yes, sir, a couple of days after I got it.

Q. And when he wanted you to make a deed he brought it down to you and gave you \$150.00 and you signed it, isn't that correct? [950—620]

Mr. TANNAHILL.—We object to that as leading

(Testimony of Charles W. Taylor.)

and suggestive.

A. Yes, sir.

Mr. GORDON.—Q. Have you ever been interviewed about your testimony in this case by any of the defendants?

A. Have they ever talked to me about it?

Q. Yes. A. No, I don't think they have.

Q. Are you sure of it?

A. I have talked to all of them that I was acquainted with.

Q. When did you talk with them?

A. Oh, I talk to them every time I meet them, speak to them and talk to them.

Q. Was anything said about how you should testify in this case? A. No, sir.

Q. Has it ever been argued with you by any of them that your testimony wasn't correct, that you had given at the former trial?

A. You mean have they ever told me I didn't testify correct?

Q. Yes. A. No, sir.

Mr. GORDON.—We offer in evidence timber and stone land sworn statement, signed Charles W. Taylor, dated April 25, 1904, the nonmineral affidavit of Charles W. Taylor, the testimony of Charles W. Taylor given on final proof, the cross-examination of Charles W. Taylor given at the same time, all of which papers have been identified by the witness, the testimony of the witnesses on final proof, the cross-examination of them, the notice for publication, the receiver's receipt, and the register's certificate,

(Testimony of Charles W. Taylor.)

dated July 11, 1904, certified copy of the patent issued to Charles W. Taylor, December 31, 1904, all relating to the entry of lots 1 and 2, and the east half of the northwest quarter of section 30, in township 38 north, of range 6 east, Boise Meridian. [951—621]

Said above mentioned documents were thereupon marked by the stenographer as Exhibits 25, 25A, 25B, 25C, 25D, 25E, 25F, 25G, 25H, and 25I.

Mr. TANNAHILL.—The defendants severally object to any of the papers being introduced in evidence in so far as they relate to bills No. 406 and 407, on the ground and for the reason that the entry is not involved in these two particular actions. The defendants also severally object to the final proof papers being received in evidence in support of either of the bills, and especially the testimony of Charles W. Taylor, the claimant, the cross-examination of Charles W. Taylor, the claimant, the testimony of William Dwyer, and the cross-examination of William Dwyer. The testimony of one witness seems to be missing.

Mr. GORDON.—I didn't have the rest of them, Mr. Tannahill.

Mr. TANNAHILL.—All right. And the proof of publication, upon the ground that they relate to the final proof and matters occurring long after the filing of the sworn statement, and are irrelevant and immaterial. The defendants severally waive any further identification of the papers just offered.

Mr. GORDON.—Q. Now, do you remember, the

(Testimony of Charles W. Taylor.)

first talk you had with Mr. O'Keefe, exactly what he said his connection with Mr. Kester was?

Mr. TANNAHILL.—We object to the question upon the ground that it assumes that the witness has testified that Mr. O'Keefe said there was some connection with Mr. Kester, while the witness has testified to the contrary. There was nothing said about it.

Mr. GORDON.—Answer the question.

Thereupon, upon request, the last question was repeated by the stenographer.

A. The first talk he ever had with me, about all I remember he said when he spoke about Kester's name at all was that him and Kester was going into the timber to take timber; that is as near as I can get [952—622] at it, as much as I remember about it.

Q. I will ask you whether or not you made this statement: That he and George H. Kester were in together, and that they were going to get some parties to take up timber claims for Kester?

A. Well, he may have said that, but it has been so long ago that I have about forgot a whole lot of this. He may have said it, and I ain't positive of it now.

Q. Do you remember making an affidavit, Mr. Taylor, before Mr. O'Fallon and Mr. Goodwin in July, 1905?

A. I believe I did make a statement before them in Boise. I think that was in July; I am not positive.

Q. Was that a voluntary statement that you made to them?

(Testimony of Charles W. Taylor.)

A. It was in what they called their sweat-box.

Q. Did they call it the sweat-box?

A. They didn't call it the sweat-box, no, sir.

Q. Well, did they sweat you?

A. Well, it was pretty warm in there for awhile.

Q. Well, what did they do? Did you tell them any different story than you have told here?

A. I don't remember, but I think I told them about the same thing, as near as I can remember.

Q. You told them the truth, didn't you?

A. I aimed to.

Q. And you have told the truth here, have you not?

A. That is my calculation.

Q. Did they have to use any pressure to get you to make a statement similar to the one you have made here?

A. They told me if I didn't, if I wasn't careful they would send me to the penitentiary.

Q. If you weren't careful about what?

A. About what I said. [953—623]

Q. Did they show any indication that they wanted you to tell anything but the truth?

A. Well, I don't know; the truth seemed to be what they was after.

Q. You didn't want to tell anything about it, did you?

A. I didn't want to tell anything more than I had to. That was the first time I had ever been in court, and they looked pretty big to me.

Q. There hasn't been any pressure brought upon you to testify in this hearing, has there?

(Testimony of Charles W. Taylor.)

A. No, sir.

Q. You haven't been intimidated in any way, have you? A. Not a bit.

Q. And there has been no disposition shown to have you tell anything but the truth, has there?

A. No, sir.

Q. Either at this hearing or at the time you appeared, in February last, as a witness for the Government against the same defendants?

A. No, sir.

Q. Did you give Mr. O'Fallon and Mr. Goodwin practically the same statement that you have given here?

Mr. TANNAHILL.—We object to that, on the ground that the statement is the best evidence, and the witness has a right to examine the statement before he answers such a question as that. It is very hard for anyone to remember five years back what kind of a statement he made, and as counsel has the statement in his hand it is right and proper that he should hand it to the witness and let him read it over.

Thereupon, upon request, the last question was repeated by the stenographer.

A. I think I did, as near as I can remember.

Mr. GORDON.—Q. When they told you you had better be careful it was that you weren't going to give them anything? Is that correct? [954—624]

A. Yes, sir.

Q. I will ask you to look at this affidavit, Mr. Taylor, which purports to be an affidavit made by you before Mr. O'Fallon July 13, 1905, and ask you

(Testimony of Charles W. Taylor.)

if that is your signature to that paper?

A. Yes, sir.

Q. Did you read that paper over before you signed it? A. No, I don't think I did.

Q. Have you ever read it over since?

A. This paper?

Q. Yes. A. No, sir.

Q. Well, read it over (handing witness affidavit), and see if there is anything in that that isn't true.

Thereupon the witness apparently read the affidavit.

Q. That is the affidavit you signed, is it?

A. Yes, sir.

Q. And are they the facts as you understood them at that time?

A. Yes, sir. There are a lot of things in there a man can't remember without he would read it over though.

Q. Now, does that refresh your recollection as to what Mr. O'Keefe told you his connection and relations with Mr. Kester were in regard to timber claims?

Mr. TANNAHILL.—We object to the question, on the ground that it calls for a conversation with a person who is now deceased, and not in the presence of Mr. Kester or any of the defendants.

The SPECIAL EXAMINER.—Answer the question.

A. Yes, sir.

Mr. GORDON.—Q. What did he say about Mr. Kester?

A. He said that him and Kester was in together,

(Testimony of Charles W. Taylor.)

just as that affidavit said there, that they was going into the timber to take up claims. [955—625]

Q. What about other people taking up claims?

A. Well, that is what he said, that they was, him and the parties was going in to take up claims.

Q. For whom? A. For him and Kester.

Q. And who was it your understanding was to get your claim?

A. Mr. O'Keefe was to get mine, and he was to turn it all over to Kester himself.

Q. Did you make the same proposition to your brother and to Mr. Dammarell and Mr. Prentice?

Mr. TANNAHILL.—We object to that as immaterial.

A. Yes, sir.

Mr. GORDON.—Q. Did they agree with you to take up a claim under the same proposition?

A. Yes, sir.

Q. Did you know anything about the financial condition of Mr. Jackson O'Keefe?

A. No, sir, not very much.

Q. Did you know enough about him to know whether or not he was a man that had money to deal in timber claims?

A. No. I know he always had money to do what he wanted to with, but how much money he had I didn't know.

Q. Now, do you remember whether Mr. O'Keefe said anything about the \$150.00 he was to give Prentice?

A. He told me to tell him what he would give him.

(Testimony of Charles W. Taylor.)

Q. Was he going to give him that, or was he going to credit him with that on his account?

A. He never said anything to me about that, that I know of. I don't remember anything about how he was to pay him, whether he was to credit him on what he owed him, or whether he was to pay him the money. [956—626]

Q. Do you remember whether or not Mr. O'Keefe told you that he intended to give Prentice credit for the \$150.00 that he was to receive for his claim on what he, Prentice, owed the Cloverland Irrigation Company?

A. I don't remember whether he did or not.

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mr. Taylor, do you remember making an affidavit before George H. Rummonds, a notary public, on the 21st day of January, 1907?

A. I think I did. I don't remember what day it was, or when it was.

Q. Look that paper over and the signature, and state whether or not that is the affidavit you made (handing witness paper). You remember making that affidavit, do you? A. Yes, sir.

Q. And you signed it? A. Yes, sir.

Q. The affidavit is true, is it? A. Yes, sir.

Mr. TANNAHILL.—We ask that it be marked as Defendants' Exhibit "E," for identification.

Said above affidavit was thereupon marked by the stenographer as Defendants' Ex. "E" for identification.

(Testimony of Charles W. Taylor.)

Redirect Examination.

(By Mr. GORDON.)

Q. I show you a deed made July 12, 1904, signed and executed and acknowledged by C. W. Taylor, and ask you whether that is your signature and whether you signed that and acknowledged that deed? A. Yes, sir.

Mr. GORDON.—As the deed that the witness has identified is the original, and we do not wish to hold the same as an exhibit, it is [957—627] stipulated by and between the parties that Charles W. Taylor made and executed and acknowledged a deed, bearing date July 12, 1904, conveying to William F. Kettenbach and George H. Kester, in consideration of \$1.00, lots 1 and 2, and the east half of the northwest quarter of section No. 30, in township numbered 38, north of range 6 east, Boise meridian, containing 157.80 acres, and that said deed was acknowledged before George W. Bailey, notary public of Asotin, Washington, July 12, 1904, and that said deed was recorded in the office of the recorder of Nez Perce County, Idaho, at the request of the Lewiston National Bank January 20, 1906, in book 84 of Deeds, at page 327.

Mr. GORDON.—Q. Mr. Taylor, is that the deed that Mr. O'Keefe told you would not be recorded until after you got your patent?

A. Yes, sir, that was the only deed that was ever made out to my knowledge.

Q. It was the only deed that was ever made?

A. Yes, sir.

(Testimony of Charles W. Taylor.)

Recross-examination.

(By Mr. TANNAHILL.)

Q. Mr. Taylor, this affidavit that you made before Mr. O'Fallon was made at the time you were called to Boise to attend a session of the grand jury, was it not? A. Yes, sir.

Q. Now, where was that affidavit made?

A. I think it was in a room that Mr. Ruick occupied most of the time.

Q. Who was present when that affidavit was made?

A. Mr. Ruick was in there part of the time, but he wasn't in there all the time; Mr. O'Fallon and Goodwin were in there all the time.

Q. Who was it that told you they would send you to the penitentiary?

A. Mr. Ruick. [958—628]

Q. How many times did he tell you that?

A. I don't know; he told me that several times.

Q. I will ask you if you first made the statement substantially as made, as stated in this affidavit that you made before Mr. Rummonds, which you have just identified, Defendants' Exhibit "E." Did you tell them substantially what you stated in that affidavit?

A. Well, about as near as I could remember it.

Q. Was it after you made your first statement to them that they told you they would send you to the penitentiary? A. Yes, sir.

Q. And then did they tell you that they knew that your arrangements with Mr. O'Keefe were something different from that?

(Testimony of Charles W. Taylor.)

A. Yes, sir; they told me I was lying to them and I knew it.

Q. Told you that you was lying to them?

A. Yes, sir.

Q. As a matter of fact, you was not lying to them when you made this first statement?

A. That statement just referred to here?

Q. Yes, when you made your first statement to them down there at Boise before you made this affidavit, you was not lying to them, was you?

A. No, sir, I was aiming to tell them the truth.

Q. Did they ask you questions, and was this affidavit made up from questions and answers they asked you, this affidavit you made for Mr. O'Fallon down there at Boise? A. Yes, sir.

Q. And did they tell you that they knew that Kester and O'Keefe were in together? A. Yes, sir.

Q. And it was after that that this affidavit was made up, this affidavit that you made down there for Mr. O'Fallon and Mr. Goodwin?

A. After that that affidavit was made up? [959—629]

Q. Yes, after they told you they knew Mr. Kester and O'Keefe was in together?

A. Yes, sir; that was the last thing they done, was to make that affidavit, before I left Boise.

Q. Wasn't it a matter of fact that Mr. O'Keefe told you that Kester and some other parties were going up into the timber to take up claims?

A. Yes, sir.

Q. Mr. O'Keefe never told you that he and Kester

(Testimony of Charles W. Taylor.)

were in together and that they were going to have people locate on timber claims, did he?

A. I didn't understand it that way. He told me the second time I talked to him about it,—that was the time we went up there to take up timber claims,—and that was the time he told me he couldn't make no agreement with me.

Q. Didn't he tell you that Kester told him that that kind of agreement was against the law?

A. Yes, sir.

Q. And it was the first arrangement that you was talking to Mr. O'Fallon and Mr. Goodwin about that was embodied in this affidavit, was it not?

A. Yes, sir.

Q. Did you tell Mr. Goodwin and Mr. O'Fallon and Mr. Ruick about the second arrangement you and Mr. O'Keefe had, that he couldn't make that kind of an agreement?

A. Yes, sir, I told him that in the grand jury room.

Q. They didn't include that in your affidavit, did they?

A. I think I told him in the grand jury room; I know I told him that some time.

Q. Then your affidavit that you made for Mr. Goodwin and Mr. O'Fallon don't state all of the facts, does it?

A. Well, as near as I can remember.

Q. I mean there was some of the circumstances left out? [960—630]

A. There was some things asked me I think in the grand jury room that wasn't asked me there.

(Testimony of Charles W. Taylor.)

Q. Then this affidavit was made up from your talk with Mr. Goodwin and Mr. O'Fallon regarding your first arrangement with Mr. O'Keefe?

A. Yes, sir.

Q. And it does not refer to your second arrangement with Mr. O'Keefe, where he told you he couldn't make that kind of an agreement, that Kester told him it was against the law? This affidavit don't refer to that, you remember that, don't you?

A. No, sir, I don't think it does.

Q. After Mr. O'Keefe told you that he couldn't make an agreement with you, you considered that that arrangement you had made with Mr. O'Keefe was all off, didn't you?

A. Well, that was the way it looked.

Q. Well, wasn't that the way you understood it?

A. That was the way I understood it, that I had no agreement then.

Q. And you made no agreement from that time on until after you made your final proof?

A. No, sir, there was nothing said about it then until I got my receiver's receipt.

Q. Then, after you got your receiver's receipt, don't you remember, after reading this affidavit, that you and your brother talked about selling your claims then? A. Yes, we spoke about it.

Q. After you had made your proof?

A. Yes, sir.

Q. And you and your brother borrowed \$1100.00, did you not, and gave your note for it?

A. Yes, sir, gave our note for \$1100.00.

(Testimony of Charles W. Taylor.)

Q. That was in payment for the money you had from Mr. O'Keefe for expenses and location fee and the purchase price of the land?

A. Yes, sir. [961—631]

Q. How long was that note to run?

A. A year, I think; I am not positive.

Q. When you and your brother talked over the advisability of selling your claim going home after you made your final proof, you talked it over, didn't you? A. Yes, sir.

Q. Then you went and talked to Mr. O'Keefe about it, after you got home, the next day some time, didn't you?

A. Either the next day or the day after; it was within a day or two though.

Q. And you told him if you could get \$150.00 for the claim, over and above that note, and get your note back, you would be willing to sell, or words to that effect? A. Yes, something like that.

Q. Didn't he tell you he would give you the \$150.00, but if you had an opportunity to sell it within a year for more money you could do so, you could redeem it within a year, or something to that effect?

A. I don't remember just what he did say now.

Q. Don't you remember something of that kind occurring?

A. Something was said. He didn't say much to me about that; he was talking to my brother about it.

Q. But he said something to you, that if you could

▼
(Testimony of Charles W. Taylor.)

sell it for more money within a year you could do so, didn't he?

A. Something or other, but he didn't talk much to me about it.

Q. Wasn't that talk when the conversation about not recording the deed came up? Didn't he say he would not record the deed for awhile, and if you could sell it for more money to someone else you could make a deed to someone else, or words to that effect?

A. Well, he said he wouldn't record the deed.

Q. In that same conversation don't you remember that he told you that if you could sell it to someone else for more money you could do so?

A. I don't remember whether he ever told me anything of the kind or [962—632] not. I didn't talk to him much after I got my receiver's receipt.

Q. But you do remember of talking it over with your brother going home, about the advisability of selling your claim?

A. Yes, sir, it was either going home or after we got home, I don't know which.

Q. And you do remember going to see your uncle, Jackson O'Keefe, about it the next day, or the day after?

A. Or the day after.

Q. And you told him that if you could get \$150.00 over and above your note, what he had loaned you, or get your note back and \$150.00, you would be willing to sell your claims?

A. Told him we would take \$150.00 and our note.

Q. And that was the first agreement you made re-

(Testimony of Charles W. Taylor.)

garding the sale of your claim, after Mr. O'Keefe told you, going up to the timber, that he couldn't make an agreement with you to buy your claims, that it was against the law?

A. That was the first time there was ever anything said about it at all.

Q. And it was the first time you ever felt that you were under any obligation to sell your claim?

A. I didn't think I was under any obligation at all.

Q. And if someone had offered you \$1,000.00 over your expenses, after you made final proof, you would have felt at liberty to take it?

A. I would have taken it too.

Q. And you would have felt under no obligation to Mr. O'Keefe or anyone else?

A. No, I don't know as I would.

Q. The only obligation would have been to pay Mr. O'Keefe back the money he had loaned you?

A. I might have spoken to him about it, and told him I was going to do it.

Q. When he told you that he couldn't make the agreement, carry out [963—633] that agreement to buy your land, that Kester had told him it was against the law, didn't he also tell you he would loan you the money to make proof on your claims?

A. Yes, sir.

Q. And you would have to give him your note for it?

A. Yes, sir, he would take our note.

Q. And you and your brother both signed one note?

A. Yes, sir, we signed a joint note.

(Testimony of Charles W. Taylor.)

Q. The note was due in a year, did you say?

A. I am not positive, but I think it was.

Q. You think it was a year's time?

A. I think so.

Q. And at the time you made that note you had no intention of selling your land, did you?

A. No, not at that time.

Q. And you had no intention of selling your claim until you and your brother talked it over, either going home or after you got home?

A. No, sir, nothing was said about it at all until after we got the receiver's receipt.

Q. I mean you in your own mind had no intention of selling your claim until you and your brother talked it over until you got home or going home?

A. I didn't know just how soon I could sell it, or anything.

Q. Then when you made that affidavit in your sworn statement, "That I have made no other application under said acts; that I do not apply to purchase the land above described on speculation, but, in good faith to appropriate it to my own exclusive use and benefit, and that I have not, directly or indirectly, or in any way or manner, with any person or persons whomsoever, made any agreement or contract by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself," that affidavit was true, was it?

A. Yes, sir. [964—634]

Q. True at the time you made it, and at the time

(Testimony of Charles W. Taylor.)

you made your final proof, and it is still true?

A. Yes, sir.

Mr. TANNAHILL.—That is all.

Redirect Examination.

(By Mr. GORDON.)

Q. Mr. Taylor, who brought this affidavit to you that counsel for the defense has shown you, marked Defendants' Exhibit "E"?

A. Who brought it to me?

Q. Yes.

A. That is the first time it has been handed to me since it was made out.

Q. Well, where was it made out?

A. In the prosecuting attorney's office at Asotin.

Q. Mr. who, what is his name?

A. Mr. Rummonds, George H. Rummonds. I guess that is the one; I made one there in his office.

Q. Who asked you to make the affidavit?

A. O'Keefe, I think it was.

Q. And was that just prior to the trials in Moscow, in 1907?

A. I don't remember, but I remember it was just awhile before Mr. O'Keefe died, in the fall, I think, before he died; I am not positive.

Q. When did Mr. O'Keefe die? Mr. O'Keefe was living in May, 1907, wasn't he?

A. You have got me. I don't remember the date now; I forget just when he died.

Q. Was the affidavit made out when you went to this office? A. No, sir.

Q. You sat there while the affidavit was being

(Testimony of Charles W. Taylor.)

made out? A. Yes, sir.

Q. And notwithstanding making that affidavit you went on the stand at the trial against Kester, Kettenbach and Dwyer in May, 1907, and [965—635] testified contrary to the affidavit, did you not?

A. I don't know when it was I was on the witness-stand in Moscow; that was in May, I believe?

Q. Yes.

A. But I don't remember whether it was before that affidavit was made out or after.

Q. Wasn't it after this affidavit was made out? Was it before this affidavit was made out?

A. I guess it was before the affidavit was made out; I remember now what I was doing at the time.

Q. Did Mr. O'Keefe tell you who had asked him to get that affidavit? A. No, sir.

Q. Were you paid for making this affidavit?

A. No, sir.

Q. Were your expenses paid to the notary's office?

A. I never paid him anything. He never asked me for nothing, and I never paid him anything.

Q. The facts stated in the affidavit that I showed you as having been made before Mr. O'Fallon are true, are they not?

A. Yes, sir, I think they are, as near as I can remember.

Q. And you have told the transaction as you understand it today, have you? A. Yes, sir.

Mr. GORDON.—That is all.

(Testimony of Charles W. Taylor.)

Recross-examination.

(By Mr. TANNAHILL.)

Q. The facts stated in this affidavit which you made before George H. Rummonds, January 21, 1907, Defendant's Exhibit "E," for identification, are true as you understand it, are they?

A. Yes, sir, that is the way I understood it, as near as I can remember. [966—636]

Q. And, regardless of what may have been said in your affidavit which you made for Mr. O'Fallon or Mr. Goodwin, or any statement which you have heretofore made, you say now that you did not understand that you had any agreement or understanding with anyone to sell your claim at the time you filed your sworn statement, that is right, is it?

A. Yes, sir, that is the way; I would have felt at liberty to sell it, and if anybody had offered me any more I would certainly have took it.

Q. What I mean is, you had no contract or agreement at the time you made your filing, to sell it?

A. I was told I couldn't do that before I filed on it, so I didn't think I was under any obligation.

Q. Are you acquainted with the handwriting of Jackson O'Keefe? A. Yes, sir.

Q. I will ask you to look at that paper I now hand you, and look at the signature, and state whether or not that is the handwriting of Jackson O'Keefe, your uncle. A. Yes, sir.

Q. And I will ask you if you saw him sign that affidavit?

A. No, sir, I didn't; I don't remember seeing him

(Testimony of Charles W. Taylor.)

sign it, but that is his signature.

Q. You have seen him write, have you?

A. Yes, sir.

Q. You have received letters from him through the mail? A. Yes, sir.

Mr. TANNAHILL.—We ask that the affidavit just identified be marked Defendants' Exhibit "F," for identification.

Said above-mentioned affidavit was thereupon marked by the stenographer as Defendants' Ex. "F," for identification. [967—637]

Redirect Examination.

(By Mr. GORDON.)

Q. I show you note dated July 11, 1904, payable twelve months after date, to Jackson O'Keefe, signed C. W. Taylor and E. J. Taylor, and ask you if that is your signature to that note? A. Yes, sir.

Q. You are acquainted with the signature of your brother, are you? A. Yes, sir.

Q. Did he sign that note at the same time?

A. Yes, sir.

Q. Is that the \$1100.00 note that you have referred to as having given when you got the money from Mr. O'Keefe? A. Yes, sir.

Q. After you got the money from Mr. O'Keefe?

A. Yes, sir.

Mr. GORDON.—We offer that in evidence.

Said note was thereupon marked by the stenographer as Exhibit 25 J.

Q. You say that Mr. Ruick threatened to indict you on a number of occasions?

(Testimony of Charles W. Taylor.)

A. He told me several times that if I wasn't careful he would send me to the penitentiary. He said he had a notion to send the whole bunch there.

Q. What did he say that for? What were you doing that occasioned him to say that?

A. I wasn't doing anything; that was probably the reason he said that.

Q. You declined to answer questions before the grand jury? A. I did when I first went in.

Q. Was that when he told you he would send you to the penitentiary if you wouldn't answer questions?

A. Yes, sir. [968—638]

Q. Was that the only time he threatened to send you to the penitentiary or to indict you, when you declined to answer questions?

A. No, he told me that in his office, that if I wasn't awful careful that he would indict the whole bunch and send us to the penitentiary.

Q. Was that when you declined to give him any information at all?

A. When I told him I wouldn't answer all the questions he wanted me to.

Q. Did Mr. Ruick tell you if you didn't tell things in a certain way that he would indict you?

A. He told me I had better tell it straight, for he already knew it.

Q. Did he indicate to you that he wanted you to tell anything but the truth?

A. I don't know as he did that. He had me pretty badly scared up for awhile.

Q. After he told you that he would send you all

(Testimony of Charles W. Taylor.)

to the penitentiary and threatened to indict you, you told the statement that you have testified here to-day?

A. Yes, sir.

Q. And did you say you told more, or didn't tell quite as much?

A. Well, I think I told it all as near as I could remember, every conversation that had taken place.

Q. Then the threat was that if you didn't answer the questions that were asked you and answer them straight you would either be indicted or sent to the penitentiary, is that correct?

A. That is the way I understood it, yes.

Q. And thereupon you proceeded to tell what you knew about the transactions?

A. Yes, sir, I thought the easiest way for me was to tell it as straight as I could. [969—639]

Q. That is all that he told you? A. Yes, sir.

Q. And after you told it as straight as you could was there any threats then to send you to the penitentiary or indict you?

A. He never talked to me any more about it.

Q. Did anybody else threaten you?

A. No, sir; Mr. Ruick was the man.

Q. Did Mr. O'Fallon threaten you?

A. No, I don't remember that he did; Mr. Ruick was the man.

Q. That was before you made any statement at all, was it?

A. That was at the time I made that statement, or just before I made it.

Q. How long after that was it that you made the affidavit for Mr. O'Fallon and Mr. Goodwin?

(Testimony of Charles W. Taylor.)

A. After he threatened me there?

Q. Yes. A. It was the same day.

Q. That was just before you left—

A. In the afternoon, before I left Boise at night; I think I left in the night-time.

Q. Had you been before the grand jury then?

A. Yes, sir; in the morning I had been before the grand jury, in the morning.

Q. Mr. Ruick had his talk with you before you went to the grand jury room?

A. He talked to me before, and then in the grand jury room, and then after we came out again.

Q. And you testified practically the same before the grand jury as you did when Mr. O'Fallon wrote the affidavit, only you gave more information before the grand jury, is that correct?

A. I don't remember whether I gave more or not. They had me in there quite awhile; it seemed to me about as long as in the other room making out the affidavit. [970—640]

Recross-examination.

(By Mr. TANNAHILL.)

Q. How long was you in making out this affidavit, this affidavit of two pages, one page and half?

A. I don't remember; I was in the office two or three hours that afternoon.

Q. How many times did they threaten to send you to the penitentiary before you finally gave this statement as they wanted it?

A. He threatened several times that afternoon.

Q. Now, as a matter of fact, Mr. Taylor, what Mr. Ruick wanted was for you to give a statement and

(Testimony of Charles W. Taylor.)

testify as he wanted you to, regardless of the facts, didn't he?

A. That is the way it looked to me; he said just as well tell it straight, he knew it anyway.

Q. This affidavit isn't the truth, is it, that you gave to Mr. O'Fallon and Goodwin?

A. A whole lot of it is, as well as I could remember.

Q. That isn't the whole truth, is it?

A. I think there was some things in there that wasn't exactly straight; that was the reason he threatened me.

Q. They were talking to you and threatening you about three hours before they finally got you to make that affidavit, were they not?

A. I had been in the office all afternoon.

Redirect Examination.

(By Mr. GORDON.)

Mr. GORDON.—I will offer this affidavit in evidence. We offer in evidence the affidavit that has been identified by Mr. Charles W. Taylor as having been taken and sworn to before S. H. O'Fallon, Special Inspector, July 13, 1905.

Mr. TANNAHILL.—We object to it on the ground that it is irrelevant, incompetent and immaterial, and it is an attempt to impeach their own [971—641] witness.

Mr. GORDON.—Q. I will ask you, Mr. Taylor, to read that affidavit that has just been offered, line for line, and state wherein that affidavit isn't true, and doesn't comport with the facts as they really are.

A. I said it was true as near as I could remember it, a minute ago.

(Testimony of Charles W. Taylor.)

Q. This affidavit is?

A. Yes. Still there might be things in there that wasn't exactly right, but then as near as I could remember then and as near as I remember things now, these affidavits I have sworn to, I aimed to tell the truth in them as near as I could remember then.

Q. Now, as you read them now are there any facts in that affidavit that I have just handed you that are not the honest, truthful state of facts?

A. Here is something I don't remember anything about, is whether I said it was to go to Kester and Kettenbach.

Q. That doesn't say it was to go to Kester and Kettenbach. Read it again.

A. It says, "when I proved up on it it was to go to, Mr. Kester and Kettenbach." No, I take it back; their name was not mentioned, that is it; I take it back.

The SPECIAL EXAMINER.—You read that some time ago and said that was correct.

Mr. GORDON.—Q. You have read this affidavit through now, have you? A. Yes, sir.

Q. Now, I will ask the stenographer to read the question again so that you can answer it.

The question was thereupon read by the stenographer as follows: "Now as you read them now are there any facts in that affidavit that I have just handed you that are not the honest, truthful [972—642] state of facts?"

A. No, I think that is the straight truth, as near as I can tell it.

Q. You can remember it?

(Testimony of Charles W. Taylor.)

A. As near as I can remember it.

Recross-examination.

(By Mr. TANNAHILL.)

Q. Now, Mr. Taylor, I call your attention to this statement in this affidavit, and pay particular attention to it. In this affidavit you state: "This land was to go to Jackson O'Keefe when I proved up. I was to get \$150.00 above all expenses for my claim." Now, that was not true according to your final arrangements with Mr. O'Keefe, was it?

A. That was the first agreement that we had.

Q. That was the first agreement?

A. Yes, sir, that was the affidavit I swore to up there.

Q. But it wasn't the final arrangement with Mr. O'Keefe?

A. We never had no more arrangements with him at all.

Q. He had called that agreement off, had he not?

A. Yes, he said he couldn't do that. There was nothing more ever said about it.

Q. Why didn't you put in this affidavit, or ask O'Fallon and Ruick and Goodwin to put in this affidavit that that agreement was called off by Jack O'Keefe, and he told you he couldn't carry out that agreement? Why is it that that don't appear in this affidavit? A. That is more than I can tell now.

Q. Isn't it a fact that they didn't want that in that affidavit and told you to leave it out?

A. No, they never told me to leave it out.

Q. But you told them that this agreement was

(Testimony of Charles W. Taylor.)

called off, did you not? A. I don't remember.

[973—643]

Q. Didn't you say you either told them that this agreement was called off, or that you testified to it in the grand jury room?

A. I don't know whether I told them in the grand jury room. All I remember about I told them is there, what they have got down in this affidavit there.

Q. Do you remember whether you told them whether that agreement was called off by Jack O'Keefe? A. No, I don't remember.

Q. Now, this statement here: "Mr. O'Keefe told me before I filed on my claim that he and George H. Kester were in together, and that he was going to get some parties to take up timber claims for Kester." Now, that statement isn't true, is it. Do you remember? Just read the question. Now pay particular attention to the question.

Mr. GORDON.—(Handing witness paper.) This is the whole affidavit, so that you can remember.

Mr. TANNAHILL.—"Mr. O'Keefe told me before I filed on my claim that he and George H. Kester were in together, and that he was going to get some parties to take up timber claims for Kester."

A. As near as I can understand it, that they were going up in there together to take up timber claims.

Q. Oh. That he and O'Keefe were going up together?

A. It don't appear that way here, but that is—

Q. That is the way you understand it?

A. Yes, sir.

Q. And the way you remember it now?

(Testimony of Charles W. Taylor.)

A. It don't appear here in the affidavit.

Q. Then the affidavit isn't correct in regard to that, is it?

A. Well, it has about the same meaning, I suppose.

Q. There is a good deal of difference in that, whether they were going up together to get timber claims, or going to take up timber claims for Kester. But you say your understanding of it was, and the meaning you intended to convey, that they were going up to the timber [974—644] together, that is right, is it?

A. Well, they were going up with a crowd, with parties to take up timber claims, and us boys was taking up for Jack, the way I understood it, and the other parties was taking it up for George.

Q. O'Keefe didn't tell you that, did he?

A. I don't know just how it did come up; they had me all muddled up so many times. I have made out so many affidavits that I have got all mixed up. I aimed to tell them the truth.

Q. I know, but I am trying to straighten out the conflict in your statements. There are so many conflicts in your statements that I am trying to get at what is the exact truth, regardless of any statement you have made heretofore. Now, this statement here isn't true, is it: "It was my understanding when I filed on my claim that when I proved up it was to go to Mr. Kester." Now, that statement isn't true, is it? It is about the eighth line from the bottom of the first page, counting up from the bottom. "It was my understanding when I filed on my claim that

(Testimony of Charles W. Taylor.)

when I proved up it was to go to Kester."

A. The way I understood it, the way I have been understanding it all the time, it was to go to him and that he conveyed everything to Kester himself.

Q. But you just testified that afterwards Mr. O'Keefe called that deal off, that he couldn't carry out that agreement, and that you had no other contract or agreement regarding it.

A. There was nothing more ever said about it.

Q. That was long before you filed on your claim, wasn't it?

A. It was the time we was going into the timber or coming out of the timber.

Q. Well, you went to the timber and came out before you filed? A. Yes, sir.

Q. Well, then, at the time you filed on it it wasn't your understanding that it was to go to Kester or anyone else?

A. Well, there was nothing more said about it. I looked at it then [975—645] just the same as I do now, that if I had the claim now and had a deed to it, and if anybody offered me \$1,000.00 or anything more than that I would sell it and pay them the money I borrowed from them.

Q. But that isn't according to this affidavit. (Reading:) "It was my understanding when I filed on my claim that when I proved up it was to go to Kester." That wasn't your understanding at all when you filed on your claim, was it?

A. I don't remember how it was now. It is in this affidavit.

(Testimony of Charles W. Taylor.)

Q. Regardless of this affidavit; I don't care whether this affidavit is true or false, but regardless of this affidavit, when you filed on the claim you didn't understand that it was to go to Kester, did you?

A. After he told us that we never gave it another thought; we considered that we wasn't under no obligation.

Q. And that is the truth, is it?

A. At the time we went to the land office.

Q. Then your affidavit in regard to that isn't true?

A. Well, there is a mistake somewhere, either on my part or—

Mr. TANNAHILL.—I see. That is all.

Redirect Examination.

(By Mr. GORDON.)

Q. When you went to the land office and filed, what did you really understand was going to be done with your claim, what did you intend to do with it after you made proof?

A. I aimed to sell it, of course.

Q. Whom did you think you were going to sell it to?

A. I knowed I could sell it to O'Keefe if I didn't sell it to nobody else, but I never give it any more thought, as I already told you; after he told us that I never talked to him any more about it.

Q. But even when you filed you knew he wanted it and would take it, didn't you? [976—646]

A. I knew I could get rid of it to him, that was all

(Testimony of Edgar J. Taylor.)

there was to it.

Mr. GORDON.—That is all.

Mr. TANNAHILL.—That is all. [977—647]

[Testimony of Edgar J. Taylor, for Complainant.]

EDGAR J. TAYLOR, a witness called on behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Edgar J. Taylor? A. Yes, sir.

Q. And you are a brother of Mr. Charles W. Taylor, who has just testified? A. Yes, sir.

Q. You took up a claim under the timber and stone act in April, 1905, did you not?

A. Yes, sir, I believe I did.

Q. I show you timber and stone land sworn statement, signed Edgar J. Taylor, dated April 25, 1904, and ask you if you signed that paper and filed it in the land office at Lewiston, Idaho, about the date it bears?

A. I signed a paper there; I couldn't swear that that was the paper.

Q. Well, there is no question about that. I show you nonmineral affidavit of Edgar J. Taylor. Is that your signature to that? A. Yes, sir.

Q. Dated April 25, 1904. I show you the testimony of Edgar J. Taylor, taken at final proof, dated July 11, 1904, and ask you if that is your signature to that? A. Yes, sir.

Q. I show you the cross-examination of Edgar J. Taylor taken at the same time, and ask you if that

(Testimony of Edgar J. Taylor.)

is your signature to that? A. Yes, sir.

Q. Mr. Taylor, who first spoke to you about taking up a timber claim?

A. My brother, Charles W. Taylor.

Q. What did he say to you? [978—648]

A. He said if we would go up and take up a timber claim now we could get the money to take it with.

Q. Did he say anyone had sent him to you for that purpose?

A. I don't recollect whether he said they sent him or not; he had been talking to O'Keefe.

Q. He is your uncle? A. Yes, sir.

Q. Now, state what he said.

A. Well, I don't know as I can remember just what was said.

Q. Well, tell it as near as you can.

A. He said we could take up a timber claim at the same time and get the money to pay for it, and sell it for \$150.00 above cost, and sell it as soon as we got title.

Q. Is that just as he told it?

A. As near as I recollect, yes.

Q. Who was to furnish the money?

A. We was to get the money from Mr. O'Keefe.

Q. For all your expenses? A. Yes, sir.

Q. Where were you to get the \$150.00?

A. Well, we were to get it from Mr. O'Keefe.

Q. That was after you made your final proof?

A. Yes, sir.

Q. What were you to do with the land?

A. Well, we could sell it to him for that price over

(Testimony of Edgar J. Taylor.)

and above that, if we wanted to, after we got title.

Q. Now, did you go to see Mr. O'Keefe about this claim?

A. Well, I never seen Mr. O'Keefe about it at all. I met him down here at the depot when we started to go to Pierce City, that was the first time we met him after that.

Q. Did you have a talk with him?

A. Not at that time I didn't. [979—649]

Q. Had you had a talk with Mr. O'Keefe about this timber claim before that?

A. Not before that; no, sir, I had not.

Q. What did Mr. O'Keefe say to you?

A. He simply said he would furnish us the money to get the claim on and take our notes, and if we wanted to sell after we got title he would give us \$150.00.

Q. Over and above expenses? A. Yes, sir.

Q. And it was with that understanding that you took the claim up?

A. That we were to sell the claim—he said he bought no claims without title.

Q. Did he tell you who told him not to buy claims without title?

A. I don't remember now that he did.

Q. Did you know how much the claim was to cost you?

A. Well, we didn't at that particular time.

Q. Who paid your expenses from here to Pierce?

A. He paid them himself, or furnished the money for them, and took it in on a note afterwards.

(Testimony of Edgar J. Taylor.)

Q. Now, wait until we get to that note. The note was taken almost a year after that, wasn't it?

A. I don't remember whether the note was taken when we made filing or when we made proof, I don't recollect.

Q. How many notes did you give—just the one?

A. Just one.

Q. You and your brother joined in the note?

A. Yes, sir.

Q. That was the day you made proof?

A. I think it was.

Q. And you went up to see the claim the preceding October, did you? A. Yes, sir.

Q. Who were of that party? [980—650]

A. Joe Prentice, Mr. Dammarell, Mr. O'Keefe, my brother and I.

Q. And you went from here to Pierce?

A. Yes, sir.

Q. And from Pierce where did you go?

A. Went out to see the timber claim from Pierce City.

Q. How far is the timber claim from Pierce?

A. About twenty miles, as near as I can recollect.

Q. And you went from Pierce to the timber claim how? A. Horseback.

Q. Who furnished the horses for you?

A. Mr. O'Keefe paid the hire of them. We got the horses at Orofino.

Q. You paid none of the expenses going to the timber claim or returning, did you? A. No, sir.

Q. That was all furnished by Mr. O'Keefe?

(Testimony of Edgar J. Taylor.)

A. Yes, sir.

Q. Did he furnish it for all of the party?

A. I believe he did.

Q. And he gave you a round trip ticket when you left Lewiston?

A. I don't recollect whether we got a round trip ticket or bought another ticket to come back on. I don't know.

Q. Now, how long were you gone from Lewiston?

A. About four or five days, something like that.

Q. This was in October that you went up to see this land, was it? A. Yes, sir.

Q. October, 1903, and you filed April 25, 1904, according to your sworn statement. That is correct, is it? A. Yes, sir.

Q. Now, was any reason given why you didn't file directly after you returned from viewing the land?

A. Why, I don't remember whether there was or not. They told us at [981—651] the land office that we would be notified through a paper that would be furnished in Pierce City, and we got the notice.

Q. Was anything said about Mr. Kester or Mr. Kettenbach by Mr. O'Keefe at the time you talked to him about this land?

A. No, sir, not that I remember of.

Q. You knew that Mr. Kester and Mr. O'Keefe were in partnership at that time, did you not?

A. Yes, sir.

Q. Were they connected with the Cloverland Irrigation Company? A. Yes, sir.

Q. Who was the president of that company?

(Testimony of Edgar J. Taylor.)

A. Mr. Kester, I think.

Q. George Kester? A. Yes, sir.

Q. And what was Mr. O'Keefe in that concern?

A. I am not positive; I think he was secretary, but I am not positive.

Q. Now, when Mr. O'Keefe talked to you about taking up a claim was Mr. Kester's name mentioned?

A. No, sir.

Q. Did Mr. O'Keefe tell you that he wanted to accumulate a number of timber claims?

A. He did not tell me that.

Q. Most of the arrangements with you were made with your brother, were they not?

A. Yes, sir, they were made with my brother.

Q. Who notified you of the time that you should file your original papers?

A. To make final proof, you mean?

Q. No. I mean the first papers you filed.

A. Why, I don't remember who did give the notice to me; I don't recollect that. [982—652]

Q. Did Mr. O'Keefe notify you?

A. I don't remember whether he did or not.

Q. And you came down to Lewiston several days before you filed? A. Yes, sir.

Q. How long? A week?

A. Something like about a week.

Q. And you formed in line at the land office?

A. Yes, sir.

Q. And what was the number of the position you held in the line?

A. I think it was fifth, but I ain't positive.

(Testimony of Edgar J. Taylor.)

Q. Do you remember who stood immediately in front of you?

A. I think my brother was ahead of me.

Q. Do you remember who was behind you?

A. No, sir, I do not.

Q. Was Mr. Dammarell and Mr. Prentice in that line also?

A. I think Mr. Prentice was, but I don't remember whether Mr. Dammarell was or not.

Q. Was Mr. O'Keefe also in that line?

A. Yes, sir.

Q. He took up a claim himself, did he?

A. He did.

Q. Do you remember where this sworn statement and nonmineral affidavit you have identified were prepared, who prepared those papers?

A. I don't remember ever seeing them until in the land office.

Q. Do you remember who brought them to the land office for you?

A. No, I do not. I think I got the paper from Mr. West, but I ain't positive.

Q. Did you pay any filing fee?

A. I think we paid filing fees there.

Q. Did you pay them or did Mr. O'Keefe pay them?

A. I think I got the money from Mr. O'Keefe to pay them.

Q. Do you remember how much it was? [983—653]

A. No, I do not.

Q. Was it \$12.00 or somewhere about there?

(Testimony of Edgar J. Taylor.)

A. Well, I couldn't say positively; it was somewhere along in there, but I couldn't say positive what it was.

Q. Now, after you made your original filing, several months later, you made your final proof?

A. Yes, sir.

Q. And where did you get the money with which to make your proof?

A. Got the money from Mr. O'Keefe.

Q. Where did you get it?

A. Somewhere about the land office.

Q. What do you call the land office? You mean the building the land office was in? A. Yes, sir.

Q. Did you get it in the Lewiston National Bank?

A. No, sir, I was not in the bank. It was in the building, or in the hall, I don't remember which.

Q. How much did he give you?

A. Well, I don't recollect how much money was given to us at the time.

Q. Do you remember how much you paid in the land office?

A. Paid four hundred and something, it seems to me like, but I don't recollect what the price was.

Q. And he gave you the full amount of money you paid in the land office, did he? A. Yes, sir.

Q. Did he give it to you in cash? A. Yes, sir.

Q. Did he give you the money at that time to pay a location fee? A. Yes, sir.

Q. How much was that?

A. That was \$100.00. [984—654]

Q. Who located you on this land?

(Testimony of Edgar J. Taylor.)

A. Mr. Dwyer.

Q. You had no arrangement with him to pay him a location fee, did you?

A. No, sir, I never made no arrangements.

Q. Did you say how much Mr. O'Keefe gave you to pay the location fee?

A. He gave me \$100.00 to pay for the location fee.

Q. What did he tell you to do with it?

A. Told me to pay it to Mr. Dwyer.

Q. Did you go out and hunt Mr. Dwyer up, or was he on the spot?

A. I don't remember whether I paid him right away or not, but I paid him I think around the land office there somewhere, after I got the money.

Q. Do you remember the denomination of the money?

A. It was a hundred dollar bill (laughing).

Q. Do you remember whether it was an old or a new bill? A. I think it was a new bill.

Q. You gave that hundred dollar bill to Mr. Dwyer, did you? A. Yes, sir.

Q. Before you paid the \$400.00 that Mr. O'Keefe had given you in the land office at final proof, did you go over some questions with Mr. O'Keefe that would be asked you at the land office?

A. I never went over no questions except what I swore to when I was making my proof.

Q. Did you go over them before you went to the land office with O'Keefe? A. No, sir.

Q. You have said several times, as I understand you, that Mr. O'Keefe gave you the money you paid

(Testimony of Edgar J. Taylor.)

in the land office for your final proof?

A. Yes, sir. [985—655]

Q. Do you remember whether you discussed with Mr. O'Keefe the propriety of your swearing at the land office that that was your own money?

A. Why, I don't remember that I did. I remember there was something said about borrowed money was the same as your own money.

Q. Who said that?

A. I don't remember whether Mr. O'Keefe said it or who it was.

Q. Who else were you talking to?

A. We were talking together in the crowd there at the land office, I don't remember who.

Q. All the money you paid in the land office at final proof you got from Mr. O'Keefe, is that correct?

A. Yes, sir.

Q. Then your statement that you had part of the money laid away and borrowed the balance isn't true, is it?

A. Well, I didn't use any of the money I had laid away; I had money but part of it I had borrowed.

Q. Here is the question: "Where did you get the money with which to pay for this land and how long have you had the same in your actual possession?" "Answer. Part of it I had laid away and part of it I borrowed." That wasn't exactly correct, was it?

A. No, sir.

Q. Do you remember making a statement for Mr. Goodwin relative to your timber claim?

A. I made a statement, I don't know whether it

(Testimony of Edgar J. Taylor.)

was to Mr. Goodwin or Mr. Ruick, one time.

Q. Was that statement true?

Mr. TANNAHILL.—We object to that, as the witness has a right to read over the statement before answering the question, it being a long time ago, and as the statement is in the possession of counsel it is no more than right that he should let the witness read it over before asking him to answer the question.

[986—656]

Mr. GORDON.—Q. Can you answer that?

A. I don't know what is in the statement now; I couldn't say.

Q. Did you endeavor to tell him the truth?

Mr. TANNAHILL.—The same objection.

Mr. GORDON.—Answer the question.

A. Well, as near as I remember, I think I tried to tell the truth in the statements, but I don't remember what is—

Q. Do you remember testifying at the trial of United States vs. Kester, Kettenbach and Dwyer, at Moscow, in the spring of 1907, Mr. Taylor?

Q. And I read from page 921 of record 1605, referred to in the stipulation made the first day of the hearing in this case. Do you remember whether or not you testified at that trial whether or not your brother told you that you were to take up a claim and convey it to your uncle after you made proof and receive \$150.00 for it?

Mr. TANNAHILL.—We object to that, as that isn't his testimony.

Mr. GORDON.—If you will just wait till I ask the

(Testimony of Edgar J. Taylor.)

question. I will read the questions and answers; I didn't want to start to reading all these things along here.

WITNESS.—I don't remember testifying to it in that way.

Mr. GORDON.—Q. Well, what did you testify to, if you remember?

Mr. TANNAHILL.—We object to that, as the witness has a right to read his testimony before he attempts to answer such a question as that.

Mr. GORDON.—Q. Well, state what the understanding was that you had with Mr. O'Keefe with reference to taking up this claim.

A. Well, the understanding I had was with my brother, that we could sell it for \$150.00 over and above costs after we had title.

Q. Who were you to sell it to?

A. We could sell it to Mr. O'Keefe. [987—657.]

Q. Didn't you feel under any obligation to sell it to Mr. O'Keefe? A. I did not.

Q. You assumed, then, that he was just going to furnish all the money to take this up, and you were under no obligation?

A. I considered that I was under obligation for the note I gave for the money.

Q. But you didn't give the note until after you got the money and you had been over the land?

A. Yes, sir.

Q. And all your expenses had been paid?

A. Yes, sir.

Q. I will ask you whether or not these questions

(Testimony of Edgar J. Taylor.)

were asked you, and whether or not you made the answers I shall read: "Question. You took up a stone and timber claim, didn't you?" "Answer. Yes, sir." "Question. How did you come to take it up, Mr. Taylor?" "Answer. Why, my brother told me I had a chance to take up a timber claim." "Question. Did he say who told him?" "Answer. He said my uncle had told him." "Question. What?" "Answer. He said my uncle had told him, Mr. O'Keefe." "Question. Did he tell you the particulars of the terms and so forth?" "Answer. He told me I could get \$150.00 over and above expenses if I wanted to take it, after I got title." "Question. Who were you to get the \$150.00 from?" "Answer. From my uncle." "Question. And what were you to do to get the \$150.00?" "Answer. Well, I was to take up the land and deed it to him after I got title." "Question. Did you know at that time certainly who it was to go to?" "Answer. I supposed it was going to my uncle, O'Keefe, that is the only one I knew about at that time." Were those questions asked you and those answers made by you?

A. I believe they were.

Q. And they were true, were they not?

A. Yes, sir.

Q. Now, was it under that arrangement that you took up this timber [988—658] claim?

A. It was under the arrangement that we could take the land—

Q. I asked you was that the arrangement under

(Testimony of Edgar J. Taylor.)

which you were to take up the timber claim. Answer yes or no.

Mr. TANNAHILL.—You can answer that yes or no and then explain it afterwards.

The SPECIAL EXAMINER.—Just answer yes or no first, and then if you have anything further to say you can say it if it is proper.

A. Well, I will say yes. The only explanation,—there was nothing said about selling the land until after we got title unless we wanted to.

Q. But all that was said about it any time was before you went to see the land, wasn't it?

A. Yes, sir.

Q. And you made your proof, you remember that?

A. Yes, sir.

Q. They gave you a receipt in the land office, did they not? A. Yes, sir.

Q. What did you do with that receipt?

A. The receiver's receipt?

Q. Yes, sir. A. I have it in my pocket.

Q. What did you do with it when you got it?

A. I turned it over to Mr. O'Keefe.

Q. Why didn't you tell that before when I asked you? Did you have any purpose in telling me that you had it in your pocket now?

A. That was what I understood you to mean.

Q. When you gave it to Mr. O'Keefe what did he say about it?

A. He wanted us to give a bond for a deed to secure the note, and we turned the receiver's re-

(Testimony of Edgar J. Taylor.)

ceipts over to him and gave a bond for a deed at the time.

Q. When was that? [989—659]

A. That was either the day or the next day after we made proof, I don't remember which.

Q. Did he ever return that receiver's receipt to you? A. Yes, sir.

Q. Do you know what he did that for?

A. He told me one day that the receiver's receipt was up to the courthouse and to go and get it, or he would go and get it, I don't remember which.

Q. Did he give you any reason why you should have it?

A. I don't remember any reason, no, except that it was there, and I could go get it, or he would go get it, I don't remember which.

Q. Did he tell you the inspectors were around and if they asked you to show them that and tell them you had it?

A. I don't remember that; I knew there was inspectors around.

Q. Did you go to him and ask him for it?

A. No, sir.

Q. He came to you and told you about it?

A. Yes, sir.

Q. How long was that before the inspector came to see you?

A. The inspector never came to see me at that time at all.

Q. When was it the inspector came to see you?

A. Never until I went to Boise.

(Testimony of Edgar J. Taylor.)

Q. When was that? A. 1905, I believe.

Q. How long had the inspectors been around then?

A. As near as I recollect, it was about maybe three weeks before.

Q. Then you signed a bond for a deed, as I understood you? A. Either the day or the day after.

Q. Were you given any money then?

A. We were given \$150.00.

Q. Was that deed made in Lewiston here?

A. No, sir, it was made in Asotin City.

Q. State the transaction of making that deed. Was anything said [990—660] between you and Mr. O'Keefe between the time you first talked to him about it and the time you signed the deed, about what you should do with the land?

A. Nothing, only going up from Lewiston after we made final proof he said he would like us to give him a bond for a deed to secure this deed, and that was all that was said that I remember of.

Q. Was that the only paper you have ever executed? A. Yes, sir.

Q. And he gave you the \$150.00? A. Yes, sir.

Q. Didn't you know at that time that you had parted with all the interest you had in the land?

A. No, I didn't understand it that way.

Q. You say he told you the next day he wanted you to come down and execute a bond, is that correct?

A. Yes, sir, he said he wanted us to give a bond for a deed to secure the note.

Q. Didn't he give you the note back at the same time?

(Testimony of Edgar J. Taylor.)

A. No, sir. I don't remember getting the note back until after we went to Boise.

Q. When was that?

A. That was the first trip to Boise, in 1905.

Q. Didn't he tell you he wouldn't record that paper you executed there that day until after you got patent? A. Yes, sir.

Q. As a matter of fact, didn't he give you back that note when he gave you the \$150?

A. No, sir, I don't remember getting that note back until after we got back from Boise.

Q. Who did you get it from then?

A. Mr. O'Keefe.

Q. What did you understand he was giving you the \$150.00 for?

A. I don't remember now what was said when he gave me the \$150.00, [991—661] more than we wanted the \$150.00 if we gave bond for a deed, because we needed the money, and I understood we could redeem that any time we could pay the note back.

Q. Who did you understand that from?

A. From Mr. O'Keefe.

Q. Don't you know that you made a deed and not a bond for a deed?

A. I was told it was a bond for a deed; I did not read it over.

Q. And that in getting that \$150.00 you parted with all interest in the title you had?

A. I didn't understand it that way when we were doing it.

(Testimony of Edgar J. Taylor.)

Q. You expected to get more money, did you?

A. I expected we had a right to redeem it, or get more money if there was a raise in the land.

Q. Wasn't that the original understanding, that you were to get—

A. If I wanted to sell the timber claim.

Q. And when you took the \$150.00 wasn't it your idea that you were carrying out that transaction?

A. No, I thought I had a right to redeem.

Q. You have testified at two trials, haven't you?

A. Yes, sir.

Q. And isn't this a new idea of yours, redeeming it? Have you ever testified to that at either of the other trials? A. I don't know as I did.

Q. When did you get that notion in your head?

A. I have had that notion in my head all the time.

Q. Before you came down to Boise to testify at the trial in February last did you read your testimony at the former trial? A. I believe I did.

Q. Where did you get it?

A. My brother gave it to me.

Q. Where did your brother get it?

A. He got it from a lawyer down in Asotin, I believe. [992—662]

Q. I understood you to say your uncle paid all the expenses you had in connection with taking up this timber claim? A. Yes, sir.

Q. Have you ever made any other deed except the one you said you signed when you thought you were signing a bond for a deed? A. No, sir, I have not.

Q. Have you ever been asked for any other deed?

(Testimony of Edgar J. Taylor.)

A. No, sir.

Q. When was it you found out you didn't have any interest in that property and that you had made a deed for it?

A. I believe Joe Prentice was telling me right after the inspectors was around.

Mr. TANNAHILL.—No. Joe Prentice wasn't up here.

Mr. GORDON.—Who did tell you? Have you ever talked to Mr. Pence about this?

A. Mr. Prentice.

Q. You say that you never saw that note until after you went to Boise after you first gave it?

A. I don't remember ever seeing it after that until after I came back from Boise.

Q. Who gave it to you then? A. Mr. O'Keefe.

Q. Did you turn it over to the inspector?

A. No, sir. I turned it over to Mr. Ruick at Moscow.

Q. Now, the first time you talked with Mr. O'Keefe about taking up a timber claim what did he say to you?

A. I don't remember what was said; the first talk I had with him was on the road up there to Pierce City.

Q. What did he say?

A. I remember we were talking about taking timber claims and selling them, and he told me he couldn't buy no timber lands without the title, he wouldn't buy no land without title. [993—663]

Q. Did he tell you he couldn't buy, or couldn't

(Testimony of Edgar J. Taylor.)

make any bargain?

A. He said he couldn't buy no land without title; I don't know whether he said he couldn't bargain or not.

Q. Reading from your testimony given at the trial of Kester, Kettenbach and Dwyer, given at Boise in February last, reading from page 176, I ask you whether or not this question was asked you: "When did you have the conversation that you have in mind?" "Answer. I think I talked with him on the road up to Pierce City." That has reference to Mr. O'Keefe. "Question. And what was that conversation?" "Answer. He was telling me that he couldn't make no bargain to buy no lands until we got title, but that when we got title he would give \$150.00." Do you remember that answer being made by you to that question?

A. I don't know now just how the question was asked.

Q. Well, is that the fact? Is that what he did tell you?

A. As near as I recollect, yes, it is, as near as I recollect, but I can't recollect just the words he used either now or then, either.

Q. Now, without any suggestion by you to Mr. O'Keefe about any agreement, did he just make that statement to you, that he couldn't make a bargain with anybody to buy the land before they made final proof?

A. I don't remember what it was, whether I asked him any questions about the land, or how the con-

(Testimony of Edgar J. Taylor.)

versation did come up, I don't recollect.

Q. Do you remember this question being asked you, continuing: "And without any suggestion, Mr. O'Keefe said that he would not make any agreement with anybody, and he would not buy any land until there was title to it?" "Witness. I don't remember how the conversation came up. We were talking there. He was telling me that he couldn't bargain to buy no land, and advised me not to bargain, it seems to me. I don't know just how the conversation came up." Do you remember that question being asked and that answer made by you, Mr. Taylor? [994—664] A. Yes, sir.

Q. And it was correct, was it? A. Yes, sir.

Q. Now, the first time you talked with Mr. O'Keefe, on the way to Pierce, that was the time he told you he would furnish all the expenses and the money for you to pay for this land, is that correct?

A. Well, I believe that my brother told me this before we started, that Mr. O'Keefe would furnish the money for us to go and take up the land and make the proof.

Q. And on the way to Pierce, did you talk to Mr. O'Keefe about that?

A. I think we had a conversation over it, but I don't recollect our conversation now at all.

Q. When you had your filing papers prepared, or when they were prepared, did you give anybody the description of the land to prepare them for you, or employ anybody for that purpose? A. No, sir.

Q. This note, marked Complainant's Exhibit 25J,

(Testimony of Edgar J. Taylor.)

dated January 11, 1904, payable in one year, to the order of J. O'Keefe, in the sum of \$1,100.00, signed C. W. Taylor and E. J. Taylor, is that your signature to that? A. Yes, sir.

Q. And that is the note that you referred to as having given Mr. O'Keefe?

A. Yes, sir; that is the same note.

Q. When you made your filing, to whom did you understand you were to convey this land?

A. When I made the filing?

Q. Yes.

A. You mean who I understood I would sell the land to?

Q. Yes.

A. I didn't understand then that I would sell it to anybody; I understood I could sell it to Mr. O'Keefe for \$150.00. [995—665]

Q. Did you understand that Mr. O'Keefe had some connection with Mr. Kettenbach or Kester?

A. No, I did not.

Q. I will ask you whether or not you ever made an affidavit to that effect, before Mr. O'Fallon or Mr. Goodwin.

A. I don't remember that I ever did.

Q. Do you remember whether or not you told Mr. Francis M. Goodwin in July, 1905, that you understood from Mr. O'Keefe that your land was to go to Kester and Kettenbach?

A. I don't remember of stating it now.

Q. Well, was that your understanding?

A. I understood that if we wanted to sell the land,

(Testimony of Edgar J. Taylor.)

after we got title we could sell it to Mr. O'Keefe for \$150.00.

Q. Wasn't it your understanding that Mr. O'Keefe was operating for somebody else?

A. No, sir; it was not then that I remember of. I may have had such an understanding, but I don't remember at this time.

Q. Did Mr. O'Keefe give you to understand that he wasn't going to buy that land, that he was operating for somebody else?

A. I don't remember him giving me that kind of an understanding.

Q. And you never told anybody that?

A. I don't remember now that I ever did; if I did I don't remember it at the present time.

Mr. GORDON.—We offer in evidence timber and stone land sworn statement of Edgar J. Taylor, dated April 25, 1904, the nonmineral affidavit of Edgar J. Taylor, the testimony of Edgar J. Taylor given on final proof, the cross-examination of Edgar J. Taylor, at final proof, all of which papers have been identified by the witness Edgar J. Taylor, the testimony of the witnesses at final proof, and the cross-examination of them, the receiver's receipt and the register's certificate, dated July 11, 1904, the notice for publication, dated July 25, 1904, certified copy of the patent issued to Edgar J. Taylor, dated the [996—666] 31st day of December, 1904, all relating to the entry of lots 3 and 4, and the east half of the southwest quarter of section 18, township 38 north of range 6 east, Boise meridian.

(Testimony of Edgar J. Taylor.)

Said above documents were thereupon marked by the stenographer as Exhibits 26, 26A, 26B, 26C, 26D, 16E, 26F, 26G, 26H, 26I, 26J, 26K, and 26L.

Mr. TANNAHILL.—The defendants severally object to all of the papers relating to the final proof just offered, upon the ground that they are irrelevant and immaterial. The defendants severally waive any further identification of the papers.

Mr. GORDON.—You never made but one deed to this claim, did you?

A. That is all I ever made.

Q. That was the paper that you understood was a— A. Bond for a deed.

Q. A bond for a deed? A. Yes, sir.

Q. I show you original deed, signed Edgar J. Taylor, dated July 12, 1904, conveying to William F. Kettenbach and George H. Kester, in consideration of \$1.00, lots 3 and 4, and the east half of the southwest quarter of section number 18, in township 38 north of range 6 east of Boise meridian, containing 157 acres, and I ask you if you signed, executed and acknowledged that deed before George W. Bailey, notary public of Asotin, Washington, July 12, 1904?

A. I signed a bond for a deed at that time, but I never read it over.

Q. That is the paper you signed?

A. That is my signature there, but I never read it over. I was told it was a bond for a deed and I thought it was at the time.

Mr. TANNAHILL.—It is stipulated and agreed that the witness, Edgar J. Taylor, executed the deed

(Testimony of Edgar J. Taylor.)

just identified, on July 12, 1904, a deed from Edgar J. Taylor, a bachelor, of Asotin, Washington, to William F. Kettenbach and George H. Kester, conveying lots 3 and 4, and [997—667] the east half of the southwest quarter of section 18, in township 38, north of range 6 east, Boise meridian, containing 157 acres, and that the same was signed by the witness, Edgar J. Taylor, and witnessed by J. O'Keefe and George W. Bailey, and acknowledged July 12, 1904, before George W. Bailey, a notary public for Asotin County, Washington, and recorded at the request of the Lewiston National Bank in book 84 of deeds of Nez Perce County, State of Idaho, on page 326, on the 20th day of January, 1906.

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mr. Taylor, Mr. Gordon was asking you concerning your testifying in two previous trials, and suggested that this was the first time you had thought of your understanding that you had a year, or until the maturity of the note to redeem that land when you gave that bond for a deed. I am reading now from page 935 of the record of the United States against Kester, Kettenbach and Dwyer, case No. 1605, on appeal: "Question. Your understanding with Mr. O'Keefe was that if you could sell that claim for more than \$600.00 before the maturity of that note you would be entitled to the excess, did you not, the amount you could get over the \$600.00?" "Answer. If I could get more for it?" "Question. Yes." "Answer. Well, when I gave a bond for a

(Testimony of Edgar J. Taylor.)

deed I thought I would have a right to redeem it and get more for it if I could at the time I gave the bond for the deed." Do you remember so testifying at Moscow?

A. I don't remember just the words I testified there, but that was my understanding, when I gave the bond for a deed.

Q. And that has been your understanding all the time?

A. It has been my understanding all the time.

Q. And this is not the first time you ever thought about it? A. No, sir.

Q. Now, you say Mr. O'Keefe told you that he would not buy any [998—668] land until after you got title to it? A. Yes, sir.

Q. Mr. Taylor, you understood that you had no arrangement, contract or agreement with anyone to sell this land at the time you filed on it, or at the time you made final proof, did you?

A. Yes, sir; that was my understanding.

Q. And if you had had an opportunity to sell it to someone else for a thousand dollars more you would have felt at liberty to sell it to them, would you not?

A. I would.

Q. Then the affidavit you made at the time you filed your sworn statement, "That I have made no other application under said acts; that I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit, and that I have not, directly or indirectly, made any agreement or contract, or in

(Testimony of Edgar J. Taylor.)

any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself," that affidavit was true at the time you made it, was it? A. Yes, sir.

Q. And it was true at the time you made your final proof? A. Yes, sir.

Q. And is still true? A. Yes, sir.

Q. Do you remember of making an affidavit before C. L. Thompson, notary public for Latah County, Idaho, on the 30th day of November, 1906 (handing witness paper)?

A. I remember making a statement there; I don't remember what is in the statement.

Q. You can look through it if you care to. Did you read it over at the time, or was it read to you by the notary public?

A. I believe Mr. Moore was the one that read it to us. [999—669]

Q. He read it to you, did he? A. Yes, sir.

Q. And you signed it in the presence of the notary?

A. Yes, sir, I think I did.

Q. And you recognize that as being the same statement that you heard read and signed at that time?

A. I recognize my signature on the paper.

Q. Is that your brother's signature at the bottom of it too, here? A. Yes, sir.

Q. C. W. Taylor? A. Yes, sir.

Q. Now, look through the paper and see if you recognize that as being the same paper that you

(Testimony of Edgar J. Taylor.)

signed at that time. (Witness apparently reads paper.) Do you recognize that as being the same statement? A. Yes, sir.

Q. And the statements you made in there are true, are they?

A. I think they are, as near as I understand them.

Q. Mr. Taylor, regardless of what you may have said in any of these statements or affidavits, or any of your evidence that you might have given heretofore, I will ask you to state whether or not you understood that you had any understanding or agreement with anyone that you was to sell your land at the time you filed on it?

A. I did not. My understanding was that I was simply borrowing the money to file on it and had a right to hold it.

Q. And you supposed you had a right to redeem this land within a year? A. Yes, sir.

Q. After you signed that paper which was supposed to be a bond or a deed?

A. I don't remember whether there was a specified time to redeem it in, but I had a right to redeem the land.

Q. If you had had an opportunity to sell it for more than that you had a right to sell it?
[1000—670]

A. Yes, sir, that was my understanding at that time.

Mr. TANNAHILL.—The defendants severally ask to have the affidavit just identified by the witness marked as a proper exhibit for identification.

(Testimony of Edgar J. Taylor.)

Said affidavit was thereupon marked by the stenographer as Defendants' Ex. G, for identification.

Redirect Examination.

(By Mr. GORDON.)

Q. Mr. Taylor, who presented that affidavit to you?

A. This affidavit, you mean?

Q. Who presented that affidavit to you for signature? A. Mr. Moore, I believe.

Q. What Mr. Moore?

A. That is all I know about it, that lawyer, Mr. Moore, of Moscow.

The SPECIAL EXAMINER.—Frank L. Moore, of Moscow?

A. I don't know his initials at all.

Mr. GORDON.—Q. Is he the gentleman that represented the defendants at the trial at Moscow?

A. Yes, sir, I believe he was.

Q. Did he have the affidavit prepared when he came to see you?

A. I don't recollect whether it was prepared when I seen him or not; I don't remember whether it was prepared then or afterwards.

Q. I mean did he bring it with him when he came, or was it prepared after you talked to him?

A. I don't remember whether it was prepared while I wasn't with him or whether it was prepared after or while we was talking.

Q. Where were you employed, and by whom, at the time you made arrangements to take up a timber claim?

A. I was working in Cloverland; I don't remem-

(Testimony of Edgar J. Taylor.)

ber now, but I think I was working for a man by the name of Howell. [1001—671]

Q. For what salary?

A. I don't recollect, but I think it was a dollar and a half a day.

Q. You weren't a married man? A. No, sir.

Mr. GORDON.—That is all.

At this time an adjournment was taken until tomorrow morning at ten o'clock. [1002—672]

On Wednesday, the 31st day of August, 1910, at ten o'clock A. M., the hearing was resumed.

[**Testimony of David S. Bingham, for Complainant.**]

DAVID S. BINGHAM, a witness called in behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. You are David S. Bingham, are you?

A. Yes, sir.

Q. Speak so this gentleman here can hear you.

(Indicating the Reporter.) A. Yes, sir.

Q. Where do you reside?

A. Asotin, Washington—that is, Asotin county.

Q. Where did you reside in April, 1904?

A. Asotin County, Washington.

Q. What was your occupation at that time?

A. I was working for O'Keefe & Kester at that time.

Q. That is, Jackson O'Keefe?

A. Jackson O'Keefe.

Q. And George H. Kester?

(Testimony of David S. Bingham.)

A. George H. Kester.

Q. And what was your business at that time that you were engaged in with them?

A. Well, under an irrigating proposition at Cloverland.

Q. And what was your employment with them?

A. I was their foreman.

Q. And at a salary of how much?

A. \$75.00 a month, I think.

Q. At that time you were married? A. Yes, sir.

Q. Did you have any children? [1003—673]

A. Yes, sir.

Q. How many? A. Two.

Q. You took up a claim under the timber and stone act, did you not? A. Yes, sir.

Q. I show you timber and stone lands sworn statement dated July 25th, 1904, signed David S. Bingham, and ask you if you signed that paper and filed it in the land office at Lewiston at about the date it bears? That is the original sworn statement I show you. A. That is my signature.

Q. And that is the first paper you filed in the land office? A. Yes.

Q. I show you the nonmineral affidavit bearing the same date. Is that your signature to that?

A. Yes, sir.

Q. I show you the testimony of David S. Bingham given at the final proof July 15th, 1904. Is that your signature? A. Yes, sir.

Q. I show you the cross-examination of David S. Bingham taken at the same time. Is that also your

(Testimony of David S. Bingham.)

signature? A. Yes, sir.

Q. Now, Mr. Bingham, I shall appreciate it if you will state in your own way all the circumstances connected with the taking up of this claim, who, if anyone, induced you to take it up, and other matters in connection therewith.

Mr. TANNAHILL.—The defendants severally object to any evidence in relation to the witness' taking up a claim, in so far as it relates to bills 388 and 407, on the ground that it is irrelevant and immaterial, the entry of the witness not being involved in these two particular cases.

Mr. GORDON.—Proceed and answer the question.
[1004—674]

WITNESS.—Ask the question again, please.

The last question was thereupon repeated by the Reporter.

WITNESS.—Well, I had that in my own mind in regard to taking up a claim; but so far as the inducement is concerned, why I got that from Jackson O'Keefe.

Mr. GORDON.—Q. Now, state what he said and what you did in connection with it.

A. He had been connected with Kettenbach and Kester, as I understood, in regard to the land proposition up there, or the timber proposition, and he says to me one time—

Mr. TANNAHILL.—Now, we object to the witness' understanding, and move to strike out the witness' statement as to what the witness understood, on the ground that it is immaterial, irrelevant,

(Testimony of David S. Bingham.)

and not evidence.

Mr. GORDON.—Answer it in just your own way.

The SPECIAL EXAMINER.—Go right on, Mr. Bingham, and make the statement, and speak loud enough for Mr. Hamer, the Reporter, to hear you.

WITNESS.—He wanted to know the reason why I didn't take up a timber claim myself; that I had been up in that country—he says, “You have been mining up there,” and he says, “You have used your money up there,” he says, “and I don't see why you don't get some of it back.” “Well,” I says, “I have been thinking about that, Jack,”—I called him Jack for short— and I says, “I think probably I may.” “Well,” he says, “you had better go down and file,” just in that way, which I did; I filed.

Mr. GORDON.—Q. And you had been over the land some time prior to this?

A. Prior to that, yes, sir.

Q. No one went over it with you specially, to point the land out to you? [1005—675] A. No, sir.

Q. Now, was there anything said between you and Mr. O'Keefe or any of the other defendants relative to what you would do with the land after you took it up? A. No, sir, only with O'Keefe.

Q. And what was that?

A. As far as Kettenbach and Kester and Mr. Dwyer is concerned, I never talked land to them one way or the other. What business I done I done with O'Keefe.

Q. Now, what was your understanding with O'Keefe?

(Testimony of David S. Bingham.)

A. My understanding was, I had to take this claim up, and he was to have the prior right of buying it after I proved up.

Q. Was anything said about the price?

A. Not at the time, no, sir.

Q. Did you know whether or not he was trying to and was assembling a great many timber claims? I mean getting a great many together? A. Yes, sir.

Q. And was he engaged in that alone or was he in with some one?

A. I think he was in with somebody.

Q. Who? A. Kester and Kettenbach.

Mr. TANNAHILL.—We object to the statement as to the witness' conclusions. It is not a statement of fact.

WITNESS.—Oh, I couldn't swear positive.

Mr. GORDON.—Q. From what did you reach this conclusion, Mr. Bingham—from what circumstance that you observed?

A. Why, I would call it a middleman; I would consider Mr. O'Keefe a middleman, working for Kester and Kettenbach.

Mr. TANNAHILL.—I move to strike out the answer of the witness as a conclusion and not a statement of fact. [1006—676]

Mr. GORDON.—Q. And what did he do that led you to believe that?

A. His conversations with me.

Q. Now, can you remember the gist of any of those conversations, any remark dropped here or—

A. We had several conversations in regard to the

(Testimony of David S. Bingham.)

claim after I had taken it up.

Q. Well, had you observed any of these things that led you to believe in this connection you have related, prior to you taking up a timber claim?

A. Nothing more or less than he said he was connected with Kettenbach and Kester, and would like to have a prior right to buy my claim, if I felt disposed to dispose of it, and that he had others, and mentioned others that he had bargained for.

Q. And that was before you ever filed that he discussed those matters? A. Yes, sir.

Q. Now, do you remember how long you were away from your business when you came down to file?

A. Well, I don't recollect exactly the number of days; I think probably three or four; something like that there.

Q. I mean when you came from Asotin down here to file?

A. Down here to file, yes, sir. I came from Cloverland, rather.

Q. From Cloverland? A. Yes.

Q. And you were still working for Kester and Kettenbach at that time, were you not?

A. Yes, sir—and O'Keefe.

Q. I mean Kester and O'Keefe, excuse me.

A. Yes.

Q. And was that time that you were away taken out of your salary?

A. No, sir; I never lost no time at all whatever in regard to working for them. I was getting \$75.00 a month straight time. [1007—677]

(Testimony of David S. Bingham.)

Q. And do you remember how many days you were down to Lewiston when you made your proof?

A. I venture to say probably two or three days, maybe, something of that kind; maybe four; I don't know.

Q. Were you down to Lewiston on any other occasions besides those two, relative to this claim?

A. I used to come down occasionally, yes.

Q. No, but I mean concerning this claim?

A. No, sir.

Q. Now, when you came to Lewiston to make your filing papers—this first paper that you have identified—were you furnished a description of the land?

A. Yes, sir.

Q. Who gave you that? A. I. N. Smith.

Q. And now state the circumstances of your going to I. N. Smith's office. Did you know Mr. Smith?

A. I was directed in there by O'Keefe.

Q. Was O'Keefe in Lewiston at that time?

A. Yes, sir.

Q. And did you come to Lewiston with Mr. O'Keefe?

A. I believe we came down in a private rig together.

Q. And did Mr. O'Keefe go to the office of Mr. I. N. Smith with you?

A. No, sir; he went part way to the office and pointed it out to me and told me to go in there.

Q. Did you tell Mr. Smith what you came for?

A. I went in there and took my turn with the balance of them, yes, sir. There was some more ahead of me.

(Testimony of David S. Bingham.)

Q. Did you give him any advice or information relative to the papers? A. No, sir. [1008—678]

Q. That he was preparing? A. No, sir.

Q. Did you give him the description?

A. No, sir.

Q. Did you name the final proof witnesses?

A. No, sir.

Q. And did you pay him any fee? A. No, sir.

Q. Now, did you pay your expenses from Cloverland down here at the time you came to prove up?

A. Yes, sir.

Q. Well, was that advanced to you, or was that your own money? A. That was my own money.

Q. That was on your own responsibility?

A. Yes, sir.

Q. And you paid a filing fee at the land office?

A. Yes, sir.

Q. And with whose money did you pay that?

A. My own.

Q. And were you ever reimbursed for that?

A. Yes, sir.

Q. Did you have an understanding or arrangement to that effect; or was it just a settlement that you had? A. A settlement.

Mr. TANNAHILL.—We object to that as leading and suggestive.

Mr. GORDON.—Well, he has answered it.

Q. Was there a great many people lined up at the door of the land office the morning you filed, and several days before? A. Yes.

Q. Do you remember how many there were?

(Testimony of David S. Bingham.)

A. I didn't count them.

Q. Well, I mean were there a dozen, or 50, or 100?

[1009—679]

A. Oh, I should venture to say there was somewhere about 35 or 40 or 50—I don't know. They were strung down quite a ways.

Q. And did you join that line?

A. I joined the line, yes, sir.

Q. And do you remember anything relative to the place that you held in that line, about how far you were from the beginning of the line? A. Yes, sir.

Q. What was your number? A. I couldn't say.

Q. I mean approximately?

A. Oh, probably I was about 8 or 9 or 10 or 12, maybe.

Q. And do you have any recollection of who was immediately in front of you in the line?

A. Yes, sir.

Q. Who?

A. Not right immediately in front of me, but I was in—I think Mrs. George Kester and Miss Kester; she married a man—I believe her name is Ford at present. I think she was next to me.

Q. Do you remember who was behind you?

A. It was a blind man over here, I think it is Justice, or some of that outfit, and Bert Ferris; we were mixed up there together. I couldn't exactly tell.

Q. Now, how long were you in that line?

A. Why, till my turn came. They only allowed one in the land office at a time.

Q. I know; but you are getting to the end of it. I

(Testimony of David S. Bingham.)

mean how long were you in the line till your turn came—two or three days?

A. No. I was placed in the line the same day that I came down; they was holding the line there some way or another; I guess they reserved my place for me, or something or other.

Q. Do you know who reserved your place?
[1010—680]

A. I done no business with anybody only O'Keefe, and whatever he said I done.

Q. And you didn't pay anyone for holding your place in line? A. No, sir.

Q. And you joined that line the morning the land office opened and the morning you filed?

A. Yes, sir. It opened at ten o'clock, I believe.

Q. And you had gotten in there some time just prior to that? A. Yes, sir.

Q. Now, did you have any talk with anyone about paying a location fee?

A. About paying a location fee?

Q. Yes. A. Yes, sir.

Q. Well, with whom did you have that talk?

A. Jack O'Keefe.

Q. And to whom were you to pay the location fee?

A. Well, which? What do you mean—in regard to a filing fee?

Q. No; I mean the location fee—the cruiser?

A. Oh, the crusier. Yes; I was to pay that to Mr. Dwyer, I believe—William Dwyer.

Q. Did Mr. William Dwyer locate you?

A. He claimed he did, yes, sir.

(Testimony of David S. Bingham.)

Q. Well, now, did he claim that to you?

A. Yes, sir.

Q. And had you had any connection with Mr. Dwyer concerning this matter at that time?

A. None whatever.

Q. Sir? A. None whatever.

Q. And what did he say when he claimed the right of a location fee from you? [1011—631]

A. He didn't claim it till the day I came down to prove up.

Q. Now, state what happened that day?

A. He was one of my witnesses; O'Keefe was another. I came down if I ain't mistaken, I won't be positive but I think I proved up on the 4th of August, or somewheres about that; I wouldn't say for certain exactly what time it was. Anyway,—

Q. One moment. From your proof papers it appears that you made proof on the 15th of July.

A. The 15th of July? Then I didn't prove up then, did I? Was it the 15th of July?

Q. Yes.

A. Well, it might have been. I don't know exactly whether it was July or along about the first of August.

Q. Well, now, state what you did?

A. Well, I came down to Asotin from Cloverland, and I said to Jack, I said, "To-morrow is my day," I says, "for proving up," and he says, "Yes; you go down," he says, "to Lewiston," he says, "to-night or in the morning," and I says, "Are you going to be one of the witnesses?"—he was advertised as one

(Testimony of David S. Bingham.)

of the witnesses. "No," he says, "I can't possibly go down, but you see Dwyer and Dwyer will fix it up all right with you."

Mr. TANNAHILL.—I want it understood that we object to all this conversation not in the presence of the defendants or either of them, and that the objection runs to all evidence of a like nature, so that we won't have to repeat it.

Mr. GORDON.—Yes; that may be understood.

Q. Now, continue, Mr. Bingham.

A. So I came down to Lewiston and put my team up in the Red Front Livery-stable—

Q. The Red Front, or White Front?

A. No, the Red Front,—it is Mallory & Lydon—and came up in front of the Lewiston National Bank, and I met Mr. Dwyer there. [1012—682]

Q. Now, what transpired there?

A. Oh, I should say about ten or half-past ten o'clock, something like that, he called me off to one side and says, "You are proving up to-day?" and I says, "Yes; that is what I came down for," and he put his hand in his pocket and pulled out a roll of greenbacks.

Q. And do you remember how much was in that roll?

A. He counted out \$100.00, and asked me to hold it. I held it in my left hand, and he took it out of my hand and stuck that down in his pocket, and he says, "That's mine."

Q. Did he say what that was his for?

A. For locating me.

(Testimony of David S. Bingham.)

Q. And then did you have any discussion with him about it?

A. He turned around to me, and "Now," he says, "here," he says, "here is \$400.00—four hundred and odd dollars," I forget now just exactly; he says, "You go up," he says, "and I will be up pretty quick, and we will prove up," and I put the money in my pocket and walked across the street and came back again and in a few minutes I went up in the office and he was there—in the Receiver's Office.

Q. And was that when you made proof?

A. Yes, sir.

Q. And was that the money that you made your proof with? A. Yes, sir.

Q. Did you and Mr. Dwyer discuss the matter of the questions that would be asked you at the land office when you made your proof?

A. Not a word—not a word. He instructed me to go up, and that was all.

Q. And you went up and you paid your four hundred and some odd dollars at the land office?

A. Yes, sir.

Q. And they gave you a receipt for it?

A. Yes, sir.

Q. As I understood you to say, that was the same money that you [1013—683] had gotten from Dwyer? A. Yes, sir.

Q. Just a few moments before? A. Yes, sir.

Q. Now, what did you do with the receipt they gave you at the land office?

A. I have it in my trunk, and neglected fetching

(Testimony of David S. Bingham.)

it down. I have got it there, though.

Q. Have you had it ever since they gave it to you?

A. Yes, sir. I can get it for you.

Q. Oh, no, I don't care for that. You never lost it?

A. No, I never lost it. Also some letters, too, from the land office, as to the patent.

Q. Did you give any note or other evidence of indebtedness for the money that you received from Mr. Dwyer?

A. No, sir.

Q. Were you asked to give any?

A. No, sir.

Q. Now, did you afterwards made a deed for this land?

A. Yes, sir.

Q. To whom did you make it?

A. Jack. O'Keefe.

Q. Did you make a deed to Jackson O'Keefe, or did you negotiate with Jackson O'Keefe and make a deed to Kester and Kettenbach?

A. That I couldn't say.

Q. Did you read the deed?

A. No, sir.

Q. And did you ever make more than the one deed for the claim?

A. No, sir.

Q. Mr. Bingham, I show you a deed dated July 26th, 1904, made by David S. Bingham, and Lillian, his wife, to J. O'Keefe, and ask you if that is your signature to that deed? [1014—684]

A. Yes, sir.

Q. And that is the signature of your wife?

A. Yes, sir.

Q. And you acknowledged it before George W.

(Testimony of David S. Bingham.)

Bailey on the 26th of July, 1904?

A. Yes, sir. I forgot the date, but I remember the circumstance very well.

Mr. GORDON.—It is stipulated by and between the parties that David S. Bingham and wife Lillian, on July 26th, 1904, executed and acknowledged a deed, conveying to J. O'Keefe in consideration of one dollar, the southeast quarter of section 17, township 39 north, of range 5 east, Boise meridian, containing 160 acres; that said deed was acknowledged before George W. Bailey, of Asotin, Washington, July 26th, 1904; that said deed was filed for record January 18th, 1906, at the request of the Lewiston National Bank, and recorded in Book of Deeds 84, at page 315, of the records of the Recorder of Nez Perce County, Idaho.

Mr. TANNAHILL.—The defendants severally waive any further identification of the document, but object to the evidence in so far as it relates to bills No. 388 and 407, upon the ground that the entry of the witness is not involved in these two particular actions.

Mr. GORDON.—Q. Now, Mr. Bingham, will you state the circumstances of you signing that deed which you have just identified?

A. Why, I was living at Cloverland, my wife and myself, and running a kind of a hotel, and stopping on the company's place—O'Keefe & Kester's—and one day this man Bailey—George W. Bailey—and Mr. O'Keefe came up there, and O'Keefe said, "We might as well settle this here proposition up in re-

(Testimony of David S. Bingham.)

gard to that land," although we had a talk prior to that in regard to it, and he wanted to know if I wanted to sell; and there was a ten-acre tract up there—orchard tract—that I wanted to get hold of, and I had quite a bit of money coming to me, and I thought if I could get the money out of this timber claim I [1015—685] could buy this ten acres; and I had a talk with my wife, and she thought that we had better sell and take this ten acres, so I told him I would sell to him, and he says, "Well, now," he says, "the arrangements is," he says, "to let you have over and above all expenses," he says, "that you was *to down* there, why" he says, "\$150.00." "Well," I says, "I might as well take it, Jack., along with the balance of them." He told me he had made similar arrangements as far as the Taylor boys, I guess.

Q. He what?

A. He bought from the Taylor boys, and Dammar-ell, and Prentice, and those boys up there.

Q. And did he give you the \$150.00 then?

A. No, sir; he gave me a check for \$150.00.

Q. And was it his own check?

A. It was his own check; yes, sir.

Q. And was the deed already prepared when he and Mr. Bailey came there?

A. Yes, sir; that is, Mr. Bailey done some writing afterwards. I don't know whether he made out the deed there or not. He was sitting at the table, writing, in the dining-room. I couldn't say whether he had a blank deed, or whether he made the deed out when he came up there. I couldn't say for that.

(Testimony of David S. Bingham.)

Anyway, we acknowledged the deed before Mr. Bailey there.

Q. Was there anything said at that time, or any time during this other conversation referred to, as to whether or not Mr. O'Keefe was purchasing that for somebody else?

A. No, there wasn't anything said in regard to that.

Mr. GORDON.—We offer in evidence the timber and stone lands sworn statement of David S. Bingham, dated April 25th, 1904, the nonmineral affidavit of David S. Bingham, the testimony of David S. Bingham on final proof, the cross-examination of David S. Bingham at the final proof, all of which papers have been identified heretofore by the witness, [1016—686] the testimony of the witnesses on final proof, and the cross-examination of them, the affidavit of publication, the Receiver's Receipt and the Register's Certificate, dated July 15th, 1904, and a certified copy of the patent issued to David S. Bingham December 31st, 1904, all relating to the entry of the southeast quarter of section 17, in township 39 north, of range 5 east, of Boise meridian.

Mr. TANNAHILL.—The defendants severally object to all of the final proof papers being admitted in evidence, upon the ground that they are matters relating to the final proof, and occurring long subsequent to the filing of the sworn statement, and are irrelevant and immaterial. The defendants severally waive any further identification of the papers.

Said documents were thereupon marked by the

(Testimony of David S. Bingham.)

Reporter as Exhibits 27, 27A, 27B, 27C, 27D, 27E, 27F, 27G, 27H, 27I, 27J, 27K, 27L, and 27M.

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mr. Bingham, the details of the matters relating to your taking up this timber claim, and the circumstances leading up to it, are not as clear to you now as it was shortly after the time, is it?

A. Why, George, I don't know; I think everything is just about as clear to me as ever it was in regard to the proposition. I think everything is as clear.

Q. Do you remember of making an affidavit before George H. Rummens, a notary public for Asotin County, Washington, on January 30th, 1907, in relation to the circumstances of your taking up this claim? (Handing a document to the witness.)

A. Yes, that is my signature.

Q. Just read the affidavit over and see if you recall the circumstances. (The witness read said document.)

A. Yes; that is my signature.

Q. Does that refresh your recollection as to some things that [1017—687] occurred in connection with your taking up this timber claim, Mr. Bingham?

A. Not in particular; no, sir.

Q. The statements you made in this affidavit were substantially correct, were they?

A. I can't say exactly that they are.

Q. Do you recall any particular part of them that is not correct?

A. Yes, there is. I can read it over.

(Testimony of David S. Bingham.)

Q. What particular part of them is it that is not correct?

A. I don't think that I made the statement in the first part there, although I might have at the time; I wouldn't be positive in regard to it. I made the statement that I was a native born citizen of the United States. That's right. That I was well and personally acquainted with Jackson O'Keefe and William Dwyer and George H. Kester and W. F. Kettenbach. I didn't consider I was acquainted, if I recollect; that I wouldn't make that kind of a statement, because I wasn't personally acquainted with them.

Q. You knew of them, did you not?

A. Yes, sir; I knew of them.

Q. Knew them when you seen them?

A. Yes, sir.

Q. You had a speaking acquaintance with them, did you?

A. Yes, sir. And also it says here "with respect to entries of Government lands made by Edgar Dammarell, Joseph H. Prentice, Charles W. Taylor and Edgar Taylor at the Lewiston, Idaho, land office, under the timber and stone act, and which said cause is prosecuted upon an indictment returned by the Federal Grand Jury at a term of said District Court holden in the City of Boise, Idaho, in July, A. D. 1905." I know nothing at all about that, as far as that is concerned.

Q. Well, that is simply descriptive.

A. Yes, and it says here that I entered 160 acres of

(Testimony of David S. Bingham.)

timber land at the Lewiston land office in April, 1904, under the timber and stone [1018—688] act, and made proof thereon about the middle of July, 1904, and sold and conveyed the same to the said Jackson O'Keefe on or about the latter part of August or first part of September. I done that, too; I will admit that part of it. "The facts and circumstances of my acquiring the same and the sale thereof, are to the best of my recollection, about as follows: Sometime of the fall of 1903 Jackson O'Keefe and the above named Dammarell, Prentices and Taylor boys, went into the timber to locate on timber claims. Shortly after their return I met Mr. O'Keefe and asked him why he didn't let me know that they were going into the timber and told him that I had never used my right under the timber and stone act and that I would like to get a claim." I acknowledge that I did have that talk with him. "He informed me that they had located on what is known as Reed's Creek in the Pierce City Country, and also said that he had seen Ike Bingham's"—that is a brother of mine—" (my brother's) cabin and I told him I was well acquainted with that country, having mined, prospected and hunted there three different summers. He told me to see one William Dwyer"—which I acknowledge that I never did after that in regard to this—

Q. Well, he told you to see William Dwyer?

A. Yes, sir—"William Dwyer and maybe he could put me onto a claim. I afterwards had a talk with Dwyer"—There is a mistake there; that I never did. If I so stated, I swore to something that wasn't so.

(Testimony of David S. Bingham.)

Q. Well, you had a talk with Dwyer before you made your proof, did you not?

A. No, sir—yes, sir; in the morning before I made my proof.

Q. Yes?

A. Yes, sir. “I got a filing in April, 1904. After I had filed I had a conversation with O’Keefe in which I asked him (O’Keefe) if he was investing in timber up there. He said, yes, he was intending to buy a little. I asked him what he was paying for a quarter section and he said: ‘I can’t talk about the price or I can’t talk about buying [1019—689] until after you prove up.’” There is a mistake there, because he did talk to me before in regard to it.

Q. Well, you and he had that conversation, did you?

A. He came up there twice or three times a week; he would fetch up buyers to buy orchard tracts up there, and he never came up there but what I talked to him in regard to this. “I got the money from Dwyer with which to make proof.” That’s true. “For a time prior to and after I made my final proof I had been running a hotel and feed stable at Cloverland, Washington”—I was, and also working for the company,—“Cloverland, Washington, and at the time I made my proof I had sufficient money on my person with which to make final proof.” That’s true, I had. “But this money was a part, in fact, practically the entire capital which I used and needed to carry on my business.” That is correct; there is

(Testimony of David S. Bingham.)

no lie there. "I had an opportunity to borrow the money from Mr. Dwyer to make the proof, so I borrowed the money from him and put it in my pocket with my other money." That's right. I had other money in my pocket when I came down there, but Dwyer came from the bank and gave me the other money. "I then went to the land office and in making proof paid for the land out of the money in my pocket, so I can't say for certain whether I paid for it with the Dwyer money or the money which belonged in my business." I couldn't—it was all together. "I knew at the time that I made proof that I would have to pay Dwyer \$100.00 for locator's fees and I did not have sufficient money on hand to pay this sum in addition to the value of the land and I would have to borrow other money to use in carrying on my business, so to place the loan all in one party I got the money from Mr. Dwyer." Yes, sir; I swore to that.

Q. The affidavit is substantially correct, then?

A. Well, outside of one or two items there at the first.

Q. Just the ones you called attention to?

A. Yes.

Q. Now, you had no talk with Mr. O'Keefe, then, in regard to [1020—690] selling him the land, until after you proved up?

A. He asked me if he could have the prior right of buying this land.

Q. Did you say the "prior right" or the "preference right"?

A. The preference right or the prior right. I un-

(Testimony of David S. Bingham.)

derstood if I wanted to sell that he wanted the first chance.

Q. And that was the talk you had with him?

A. Yes, sir.

Q. And that is all the talk you had with him in regard to buying? A. Yes, sir.

Q. And then after you proved up, some little time, he came up to Cloverland and asked you if you wanted to sell? A. Yes, sir.

Q. And you told him that you would have to see your wife? A. Yes, sir.

Q. And you did go and see your wife?

A. Yes, sir.

Q. Then you asked him how much he would give, or something to that effect, didn't you?

A. Yes, sir.

Q. And he told you that he had given Dammarell and Prentice—that he had bought their claims, and he had? A. And the Taylor boys, also.

Q. Yes, and the Taylor boys; he had bought their claims, and he had given them \$150.00 over and above expenses? A. Yes, sir.

Q. And that he would give you the same?

A. Yes, sir.

Q. And then did you talk with your wife again after you had talked with him about the price?

A. Yes, sir.

Q. And she told you that she thought you had better sell? [1021—691]

A. Yes, sir.

Q. If you could buy the other piece of land up

(Testimony of David S. Bingham.)

there? A. Yes, sir.

Q. And you went back and told O'Keefe that you would take it? A. Yes, sir.

Q. And the bargain was all made in regard to the sale of your land there that day—the day that you sold it?

A. The day that I sold it, yes; we closed the bargain that day.

Q. And Mr. Bailey was with him? A. Yes, sir.

Q. And he sat down at the table and did some writing, and either drew up this deed, as you testified on your direct examination, or was doing some writing? A. Yes, sir.

Q. Now, an examination of the deed, Mr. Bingham, shows that it was all made out and signed in the same kind of ink. (Exhibiting said deed to the witness, who examined the same.) After looking at the deed, state whether or not it is your best recollection that that deed was drawn up there at that time—by Mr. Bailey, at that time? A. I think it was.

Q. You think it was? A. Yes, sir.

Q. Now, your best recollection, then, is that the deed was made out there by Mr. Bailey on that occasion? A. Yes, sir.

Q. Then, Mr. Bingham, the affidavit that you made at the time that you filed your sworn statement, “that I have made no other application under said acts; that I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit, and that I have not, directly or indirectly, made any

(Testimony of David S. Bingham.)

agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the [1022—692] Government of the United States may inure in whole or in part to the benefit of anyone except myself," that affidavit was true, was it? A. Yes, sir.

Q. True at the time you made it? A. Yes, sir.

Q. And at the time you made final proof?

A. Yes, sir.

Q. And it is still true? A. Yes, sir.

Q. Now, you said, Mr. Bingham, that you understood that O'Keefe and Kester and Kettenbach was in together. O'Keefe didn't tell you that they were in together, did he? A. Yes, sir.

Q. What did he say?

A. He said that he was working as a middleman; the same as you might consider him a middleman. He says, "If these things goes through, these claims," he says, "I will get a certain per cent out of them."

Q. Where did he tell you that?

A. Why, it was our general conversation with him and I whenever we talked about timber.

Q. Can you remember where he was when he told you that?

A. I never seen Mr. O'Keefe only when he came up to Cloverland. He always came there, and if I wasn't out on the ditch at dinner time, I would see him, and he would dictate to me what to do, and such as that.

Q. That was after you had made your final proof, was it not?

(Testimony of David S. Bingham.)

A. Oh, it was the general talk every time he came up there.

Q. Well, he wasn't talking about buying your claim before you made final proof, was he?

A. Why, as I stated before, after I put up my money and took a claim, why he wanted the prior right, providing I wanted to sell.

Q. He wanted the preference right? [1023—693]

A. He wanted the preference.

Q. That was all he said?

A. That was all he said until after I proved up, and then he was dead anxious to get the claim.

Q. Then your conversation in regard to buying your claim for Kester and Kettenbach was after you made final proof?

A. No; he always told me—our conversation was that he was in with Kester and Kettenbach.

Q. Well, now, was that before or after you made final proof?

A. Both—both. It was the general supposition that he was doing business for Kester and Kettenbach.

Q. Well, I don't want your conclusion about it, Mr. Bingham; I only want what was said.

A. Well, that's what he said, and I'm telling you what I know, that's all there is about it.

Q. Well, I know. If Jack. O'Keefe was here, then I wouldn't be so particular about it; but he isn't here. A. No, he isn't here.

Q. So I want the circumstances.

A. Yes. I am giving it to you just as I know it, that's all.

(Testimony of David S. Bingham.)

Q. Now, where were you when he said this?

A. It must have been at Cloverland, because I hardly ever came down unless I had business in Asotin or Lewiston. I was attending to business for them up there.

Q. But you don't remember the particular circumstances? A. I don't remember about that.

Q. And you don't remember the language that he used? A. No, nor the date.

Q. And you don't remember who was present?

A. No, I don't. He hardly ever talked to me in regard to the timber with anybody else present.

Q. And you are just giving your recollection of the conversation? [1024—694]

A. Just my recollection of the conversation, that's all.

Q. But you had no agreement to sell him this land before you made your final proof?

A. No; that is, no written agreement, only he asked the prior right for the land.

Q. Preference right? A. Preference right.

Mr. TANNAHILL.—We ask to have the affidavit of David S. Bingham just identified by the witness marked Defendants' Exhibit "H," for identification.

Said affidavit was so marked.

Redirect Examination.

(By Mr. GORDON.)

Q. Mr. Bingham, who presented that affidavit to you that you have just identified?

A. I don't recollect.

Q. Do you remember who brought it to you?

(Testimony of David S. Bingham.)

Was anyone with the notary public when you signed that?

A. Not that I know of. It is something new to me. I don't remember about it. That is my signature, and I have signed lots of papers up there, and I don't know how I came to sign that, I am sure.

Q. Do you remember ever having seen that affidavit before and having read it before?

A. No, sir.

Q. Do you know Mr. Frank Moore, an attorney, of the firm of Forney & Moore? A. Yes, sir.

Q. Do you remember whether or not he was along with the notary? A. I think not.

Q. Do you remember him ever coming to see you to talk about this case?

A. Not in Asotin or Lewiston; he did in Moscow.
[1025—695]

Q. I understood you to say that Mr. Dwyer never went over this claim with you?

A. Yes, sir, I said that.

Q. And you never had any transaction with Mr. Dwyer relative to taking up this claim other than the day you made final proof? A. No, sir.

Q. And now was any reason given to you by Mr. Dwyer why you should pay him a location fee?

A. No, sir.

Q. And you simply paid him that because Mr. O'Keefe told you to pay him?

A. He simply took it out of this money that he handed to me. He put it in his pocket, and handed me the balance of it.

(Testimony of David S. Bingham.)

Q. If it had been your \$516.00, you wouldn't have given him that location fee, would you?

A. No, sir; I would have had no reason to.

Q. As long as it was his own money, you didn't care whether he handed it to you and took it back, or not; is that it?

Mr. TANNAHILL.—We object to that as leading and suggestive.

WITNESS.—I didn't care what he done with it.

The SPECIAL EXAMINER.—What is the answer?

WITNESS.—I didn't care what he done with it.

Mr. GORDON.—Q. Now, when you first talked to Mr. O'Keefe about taking up this land, was that the time you had the conversation about the prior right, or the preference right?

A. Yes, sir, we talked about it at that time.

Q. As a matter of fact, Mr. Bingham,—I am not asking you now whether you had an absolute contract or agreement with Mr. O'Keefe at that time—but as a matter of fact wasn't it your understanding that you were going to convey that to O'Keefe after you got it?

A. That is my recollection. [1026—696]

Q. You would not have taken it up if you hadn't had that understanding, would you,—at that time?

A. No, I don't believe I would at that time.

Q. And the matter turned out just exactly as you understood it would when you first talked to Mr. O'Keefe about it?

A. Yes, sir.

Q. And you did just what he told you in the whole

(Testimony of David S. Bingham.)

transaction? A. Yes, sir.

Recross-examination.

(By Mr. TANNAHILL.)

Q. Now, Mr. Bingham, you had no talk with Mr. O'Keefe about selling to him further than he wanted the preference right of buying it?

A. Yes, sir, that was all; that is what I stated.

Q. And you had no talk about the price?

A. No, sir.

Q. And you could have sold it to anyone else you wanted to, if he would have given you more than Mr. O'Keefe? A. Yes, sir.

Q. Then you had no understanding with him that you would deed the land to him?

A. Nothing only me being working for him and the like of that why he wanted the right for it; that is, the first right; and I told him I would give it to him. I could have sold it to anybody, though, as far as that is concerned.

Q. Now, you just told Mr. Gordon that you understood that you was to deed it over to O'Keefe.

A. I didn't tell him anything of the kind, that I was to deed it over to him, or anything of the kind. I told you he had the prior right to it, or the preference.

Q. Well, you just said, in reply to Mr. Gordon's question, you told him—

A. Yes, that was the understanding, that if I sold to him I was [1027—697] to deed it over, of course.

Q. How is that?

(Testimony of David S. Bingham.)

A. If I sold to him I was to deed it over to him.

Q. Then there was no understanding?

A. No understanding whatever; no.

Q. What you mean to be understood as saying is that if you wanted to sell it,—

A. I wasn't tied up with him so that I couldn't sell to anybody else. I could have sold to other parties if I had wanted to.

Q. And the only obligations you felt under to Mr. O'Keefe was to give him a preference right?

A. A preference right to buy; yes, sir.

Q. If he would have given you as much as anybody else you would have sold to him?

A. Yes, sir.

Q. And if he would not have given you as much as anybody else, you would have sold to anybody else?

A. Whoever would have given the most for it.

Q. Now, Mr. Bingham, there was no one knew the facts stated in that affidavit which you made except you, was there? A. What affidavit?

Q. The affidavit which you made for Mr. Rummens—sworn to before Mr. Rummens—that I showed you and that you read over?

A. I don't recollect ever signing that affidavit. If I did, it was never read to me.

Q. Now, don't you remember—

A. That is my signature on the affidavit all right.

Q. Don't you remember going to Mr. Rummens's office and he talking with you about it and you giv-

(Testimony of David S. Bingham.)

ing him the facts as he wrote the affidavit on the typewriter?

A. I never was in Mr. Rummens's office, because I don't like him well enough to be around with him.
[1028—698]

Q. You gave someone the facts that that affidavit was written up from, did you not?

A. Rummens might have wrote that affidavit from the dictation of Jack. O'Keefe, and Jack. O'Keefe might have fetched that to me, and I might have signed it without reading it, as I have signed lots and lots of papers up there while he was selling land.

Q. Well, you have testified, Mr. Bingham, that the affidavit was substantially correct, with the exception of a few things there that was mentioned?

A. Yes.

Q. And whoever wrote it must have got some of the facts from you.

A. No, I don't think they did. I know that I didn't dictate that affidavit at all to Rummens, because I never done no business with Rummens at all, only—

Q. And you have no recollection of signing it?

A. I have a faint recollection, but I don't know where I signed it, or when I signed it; but that is my signature.

Q. Well, you have some recollection of signing that affidavit? A. No, not necessarily I don't.

Q. Well, didn't you say you had a faint recollection in regard to signing it?

A. A faint recollection in regard to seeing it; yes,

(Testimony of David S. Bingham.)

sir. That signature I would know it in any man's country.

Q. You undoubtedly signed the affidavit?

A. I undoubtedly signed that affidavit. Whether O'Keefe gave it to me, or somebody else, I don't know; but I never signed it in George Rummens's office, I can tell you that.

Mr. GORDON.—Q. Did you ever offer to sell that claim to anybody else? A. No, sir. [1029—699]

**[Testimony of Edgar H. Dammarell, for
Complainant.]**

EDGAR H. DAMMARELL, a witness called in behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Edgar H. Dammarell?

A. Yes, sir.

Q. D-a-m-m-a-r-e-double l? A. Yes, sir.

Q. Where do you reside, Mr. Dammarell?

A. At Asotin, Washington.

Q. Where did you reside in April, 1904?

A. Cloverland, Washington.

Q. How old a man are you? A. 34.

Q. And were you married in 1904?

A. Yes, sir.

Q. And of what did your family consist at that time?

A. Well, that is a question I will have to refer to my wife. (Laughing.) I have now six children.

Q. And how old is the oldest one?

(Testimony of Edgar H. Dammarell.)

A. Either 11 or 12.

Q. You don't remember how many were living in April, 1904? A. 1904?

Q. That is ten years ago—or six years ago, I mean.

A. Six years ago? Three or four.

Q. What was your occupation?

A. At that time?

Q. Yes.

A. Why, practically none; that is, I was attempting farming on the homestead and place, and was attempting to farm.

Q. Had you got a patent to your homestead at that time?

A. No, sir; I was living on my homestead and making my proof. [1030—700]

Q. And was that the only employment you had?

A. Well, I was orcharding—an orchardist, you might say, you might call it.

Q. Did you work for other people in that place?

A. Yes, sir.

Q. What do you call an orchardist, one who picks fruit?

A. No; planting and taking care of the trees.

Q. And for what? How much a day did you receive for such service at that time?

A. I don't remember. I believe it was—I think it was \$2.50.

Q. A day? A. Yes, sir.

Q. Do you know Mr. Joseph H. Prentice?

A. Yes, sir.

Q. Is he a relative of yours?

(Testimony of Edgar H. Dammarell.)

A. A brother-in-law.

Q. Did you know Mr. Jackson O'Keefe at that time? A. Yes, sir.

Q. Was there any relation between you?

A. No, sir.

Q. Were you related to the Taylor boys?

A. No, sir.

Q. Now, you may state, I will ask you if you took up a timber claim in April, 1904?

A. I took up a timber claim; I think that was the date.

Q. Now, state whether or not you were induced by anyone to take up a timber claim.

Mr. TANNAHILL.—We object to any evidence of the witness in relation to taking up a timber claim, in so far as it relates to bills No. 406 and 407, upon the ground that the entry is not involved in these particular actions, and it is irrelevant and immaterial.

Mr. GORDON.—Read the question and then let him answer it, please. [1031—701]

The last question was thereupon repeated by the Reporter.

WITNESS.—Yes, sir.

Mr. GORDON.—Q. Sir?

A. I just forget the exact particulars, but Mr. Taylor—Charles W. Taylor—was at Cloverland and he spoke to myself and Mr. Prentice about going up to take up a timber claim.

Mr. TANNAHILL.—Now, we object to any evidence of the witness as to a conversation with Jack-

(Testimony of Edgar H. Dammarell.)

son O'Keefe, upon the ground and for the reason that Jackson O'Keefe is now deceased, and is not a party defendant, and any conversation outside of the presence of the defendants is incompetent, irrelevant and immaterial.

The SPECIAL EXAMINER.—Go right on, Mr. Dammarell.

WITNESS.—He said he was going to take up a timber claim, and asked us (Mr. Prentice and I) if we thought that we would care to go up with them. I told him that in order to do so it would require some money, and that I didn't have it, and he said he didn't know but he thought perhaps his uncle would loan us the money.

Mr. GORDON.—Q. Who was his uncle?

A. That was Jackson O'Keefe. We understood that, and under those conditions I took up a claim.

Q. Now, at this conversation with Mr. Taylor, was anything said as to the value of these claims—what they would net you?

A. I don't remember. I presume there was. I don't remember.

Q. Well, at any other conversation with Mr. Taylor before you entered on the land, do you remember whether anything was said as to whether you would get a certain amount for your right or for your claim?

A. I am not sure about that conversation. Mr. Prentice and I have talked it over since, and Mr. Prentice and I don't agree as to what was said at that time. Now, whether his memory is right or

(Testimony of Edgar H. Dammarell.)

mine is I don't know. I wouldn't like to make a positive assertion as to that. [1032—702]

Q. Now, how long was that before you filed on the timber claim? A. Well, I don't remember.

Q. Well, you filed in April, and I will ask you whether or not you didn't go over the claim some time the previous October—the preceding October?

A. Yes, I think it was in October we was up there, I believe about the middle of October.

Q. Now, what arrangements were made after the first talk with Mr. Taylor?

A. Well, we made a loan—we made a loan from Mr. O'Keefe on my note.

Q. When did you make that?

A. Now, I don't remember the date.

Q. Didn't you make that the day after—just immediately after making your final proof?

A. I believe it was.

Q. Yes. A. I believe it was.

Q. Now, what arrangement had you relative to going to see this land?

A. Why, we went in with Mr. O'Keefe.

Q. No, but there was some arrangement made before you went in. State what transpired after you first talked with Mr. Taylor—Mr. Charles W. Taylor?

A. Well, I don't just remember how it lined up at that time, as to the date, but he made arrangements with Mr. O'Keefe to make the loan, in the event that he was satisfied with the timber, and we went in, and I think he made the loan after we came back, or just

(Testimony of Edgar H. Dammarell.)

before we made final proof; or, rather, not final proof—I guess you would call it final proof, though.

Q. Yes—when you paid your \$400.00 in the land office? [1033—703] A. Yes, sir.

Q. Now, did you see Mr. O’Keefe before you went to view the land? A. Yes.

Q. And what talk did you have with Mr. O’Keefe?

Mr. TANNAHILL.—The same objection, and upon the further ground that Mr. O’Keefe is now deceased, and not present to either affirm or deny the conversation, and that the Government is not permitted to use the evidence of the witness as to statements made by O’Keefe out of the presence of the defendants.

The last question was thereupon repeated by the Reporter.

WITNESS.—Why, we talked, I presume—it is so long since that it is impossible for me to remember exactly—but I presume we talked about the timber and the making of the loan. I suppose it was all satisfactory.

Mr. GORDON.—Q. Well, wasn’t anything said at that time about the disposition of the land?

A. No, nothing was said that I remember of. Of course I knew that you couldn’t dispose of the land until you had a Receiver’s Receipt.

Q. Yes, I am not asking about disposing of it, but I mean a tacit understanding or agreement as to what you should do after you got your final receipt?

A. No, sir.

Q. There was nothing said whatever?

(Testimony of Edgar H. Dammarell.)

A. Nothing said whatever.

Q. Now, who paid your expenses into the timber?

A. That was supposed to be included in the amount of money I borrowed from O'Keefe.

Q. Now, wait a minute. You hadn't borrowed any money from O'Keefe at that time?

A. Well, I had made arrangements to.

Q. How much did you arrange to borrow?

[1034—704]

A. I believe the amount was \$550.00.

Q. And he was to peddle that out to you just as the exigencies of the occasion required, was that it?

A. Well, it might be so.

Q. Well, not what it might be; isn't that the fact?

A. Well, that is the way it worked out, at least.

Q. And you went up to look at this land?

A. Yes, sir.

Q. And with whom did you go?

A. I went with O'Keefe and the Taylors—the two Taylor boys—and Prentice and myself.

Q. Now, the proposition that was made to you by Mr. Charles W. Taylor, as well as you remember it, is the one you accepted and proceeded upon; is that correct? A. Yes, sir.

Q. And as I understand, you went from Cloverland to Lewiston? A. Yes, sir.

Q. And from Lewiston to Asotin?

A. From Lewiston to Orofino.

Q. And from there to where?

A. To the timber.

Q. To the timber? A. Yes, sir.

(Testimony of Edgar H. Dammarell.)

Q. Now, who paid your expenses from Cloverland here? A. From Cloverland to Lewiston?

Q. Yes. A. I was under my own expense.

Q. And was that reimbursed you by Mr. O'Keefe when you arrived at Lewiston?

A. Not that I remember of.

Q. But you won't say that it was not?

A. No. [1035—705]

Q. Now, who paid for the railroad tickets for you to go from here to Orofino?

A. I think I paid my own ticket at that time.

Q. Now, do you just think, or do you know?

A. I wouldn't be positive as to that.

Q. Mr. Dammarell, I will ask you a leading question: Wasn't it your arrangement with Mr. O'Keefe that he would furnish all the expenses incidental to taking up this claim, and that you would give a note later for whatever the expenses would be?

A. Yes, that's true; but having railroaded myself for a number of years, and always being more or less around those places, I believe I purchased the tickets for the party, and I don't remember whether I purchased them with my own money for myself or not, but I think I seen to the baggage being checked, also. I had been baggageman for the Northern Pacific.

Q. Well, who gave you the money to purchase the tickets for the whole party?

A. Well, I don't remember; I think O'Keefe did.

Q. Were you sort of assisting him in conducting this party through?

A. Well, no more than I was more accustomed to

(Testimony of Edgar H. Dammarell.)

the handling of baggage and things of that kind pertaining to traveling, that I just took care of it for him.

Q. Then you went to Orofino, and who made the arrangements for the conveyance from Orofino to the timber?

A. Well, I expect it was Mr. O'Keefe; I don't know.

Q. You didn't pay any of the expense?

A. No, I didn't pay any.

Q. Now, do you remember who paid the expense of coming back? A. I don't know.

Q. You didn't pay your own, did you?

A. No. [1036—706]

Q. And who went over the timber with you besides this party that you left Lewiston with?

A. When we went in?

Q. Yes. A. It was Dwyer and Bliss.

Q. Did Mr. O'Keefe go with you? A. Yes.

Q. Clear up into the timber? A. Yes.

Q. And did Mr. Dwyer and Mr. Bliss take you around to the various corners of the land that you were to locate on? A. Well, I thought so.

Q. Well, don't you know whether they did or not?

A. Well, that's what I thought. I made the second trip to be sure that I was placed on the land that I thought was the place that I should be on.

Q. Well, on your second visit were you convinced that you were on the land the first time?

A. Well, I wasn't convinced. It was the first time that I had ever been in such a body of timber, and

(Testimony of Edgar H. Dammarell.)

I was at a little loss; but on the second trip I looked the corners up and I knew I had been to the right place.

Q. Well, you had been to the right place?

A. Yes, sir.

Q. When did you go the second time?

A. Let's see: I got here the day before the Fourth of July—but what year that would be—

Q. 1904?

A. Yes; I guess that would be the year.

Q. Got back where?

A. Got back here to Lewiston the day before the Fourth.

Q. What suggested you going up there to look at it the second [1037—707] time?

A. Well, I wanted to see. I didn't understand, in the first place, that we had to see each legal subdivision, and I wanted to see them, so as to know. I didn't understand what a legal subdivision is. I supposed it meant a subdivision of 640 acres, but I learned later that it was a subdivision of the 160.

Q. Who notified you of the time that you were to file on this land?

A. I don't remember; I couldn't say; it might have been Prentice or the Taylor boys.

Q. Were you very much interested in taking up a timber claim?

A. I was at that time particularly interested.

Q. You had no money of your own, had you?

A. No, sir; I had not.

Q. And were you to pay any interest on the money

(Testimony of Edgar H. Dammarell.)

you were to get from O'Keefe?

A. I believe the note called for eight or ten per cent.

Q. Did you pay any interest? A. No.

Q. You didn't? A. No.

Q. And on the way to look at the timber, do you remember discussing the timber claim with Mr. O'Keefe? A. Yes, sir.

Q. Do you remember whether or not the question was discussed whether they could enter into an agreement to sell timber land before proof?

A. No, sir; I don't remember if there was; in fact, he wouldn't be very likely to have discussed it with me, because I knew better, anyway.

Q. Well, how did he know you knew better?

A. Well, it was common knowledge that one could not sell until [1038—708] they procured a certificate; or at least it was with me.

Q. And you had never known Mr. O'Keefe before this, had you? A. Before this time?

Q. Yes. A. Oh, yes.

Q. Intimately?

A. I had known him for—I don't know how long. Let's see; I had known him for at least a year or more.

Q. Had you ever transacted any business with him? A. Yes, sir; I had.

Q. What kind of business?

A. I had bought 30 acres of land from him—irrigated lands.

Q. You had bought 30 acres from him?

(Testimony of Edgar H. Dammarell.)

A. Yes, sir; 20 acres of which I sold to my parents.

Q. And did he have a mortgage on it at that time?

A. There was a deed in escrow for a portion of it.

Q. How much had you paid?

A. My parents took up 20 acres themselves and paid cash. Or, they didn't pay cash exactly at the time; they paid it, after they received returns from their farm in the east, and I paid \$175.00, which was half of the money on the ten acres that I had purchased.

Q. And he was holding the deed in escrow at that time for you to pay the balance? A. Yes, sir.

Q. When did you pay the balance?

A. I don't remember the date.

Q. Was it the day you made the deed to him?

A. No—no.

Q. Was it just before then?

A. No. I can tell you pretty nearly. I never took up the escrow until I took it up at the Bank of Asotin County, I believe—I don't remember what month, but last year I paid the Bank of Asotin [1039—709] County and took it up.

Q. Just this last year? A. Yes, sir.

Q. And you paid them \$175.00?

A. Yes, sir; I paid them more than that.

Q. Well, and the interest? A. Yes, sir.

Q. That is, approximately? A. Yes, sir.

Q. Now, I show you timber and stone lands sworn statement signed Edgar H. Dammarell, dated April 25th, 1904, and ask you if you signed that paper and

(Testimony of Edgar H. Dammarell.)

filed it in the land office the date that it bears, at Lewiston?

A. I cannot positively swear to the date, but that is my signature, and I presume it is right.

Q. I show you notice of publication of the same date, and the nonmineral affidavit, and ask you if you signed the affidavit and filed that and the other paper on the date they bear—April 25th, 1904?

A. I can swear to the signature, and the date I presume is right.

Q. And you filed them at the same time in the land office? A. Yes, sir.

Q. I show you the testimony of Edgar H. Dammarell given on final proof, dated July 12th, 1904, and ask you if that is your signature to that paper?

A. Yes, sir.

Q. I show you the cross-examination of Edgar H. Dammarell, taken at the same time, and ask you if that is your signature? A. Yes, sir; it is.

Q. Who prepared those papers for you that I have shown you? A. I don't know who prepared them.

Q. Who attended to the preparation of them for you? [1040—710] A. O'Keefe did.

Q. And do you remember who paid your expenses from your home to the land office on that occasion?

A. I don't know; I suppose that was included in the—

Q. — final settlement? A. — final settlement.

Q. And do you remember how many days you were at the land office prior to filing?

A. I believe it was four or five days. Oh, no. No,

(Testimony of Edgar H. Dammarell.)

that's not right. I think it must—I don't remember. I was going to say two weeks. We was there a long while.

Q. And did you stand there at the land office all that time? A. Yes, sir.

Q. Sir? A. Yes, sir.

Q. What was the number of your position in that line—No. 1?

A. No, sir. I don't remember my number.

Q. How many people were ahead of you?

A. Possibly—I don't remember—possibly six.

Q. Do you remember who was directly in front of you?

A. I presume it was one of our boys from Cloverland—one of the Taylor boys or Prentice. It might have been Prentice.

Q. Do you remember who stood behind you?

A. An old man. I don't remember his name.

Q. Mr. Justice? A. Well, I don't remember.

Q. Did the gentleman have good eyesight, or was he blind?

A. Well, I don't remember. I wouldn't like to say.

Q. And do you remember where you first saw these filing papers which you have identified?

A. Yes, sir.

Q. Where? [1041—711]

A. In the office across the hall—I believe it was Smith's office.

Q. The first time you talked with Mr. O'Keefe, did I understand you to say you told him you didn't have money with which to make proof, and arrangement

(Testimony of Edgar H. Dammarell.)

was made then to get it from him? A. Yes, sir.

Q. Now, did you tell whose office you had these papers prepared in?

A. I don't remember whose office they were prepared in.

Q. Well, do you know whose office you got them from? A. They were in Smith's office.

Q. I. N. Smith's? A. Yes, sir.

Q. How did you happen to go to Smith's office to get them?

A. Mr. O'Keefe, I believe, went in with us at the time.

Q. And you filed them in the land office?

A. Yes, sir.

Q. And returned to your home, and in a month or so later why you came down to make your final proof? A. Yes, sir.

Q. Did you talk with Mr. O'Keefe between the time that you made your original filing and final proof about this claim? A. I presume I did.

Q. Well, do you have any recollection of what it was? A. Nothing definite.

Q. Do you remember when you were notified to come down and make your proof?

A. I believe the date was set by the notice. I don't remember, I believe it was.

Q. And did all of your party come together?

A. Yes, sir.

Q. You all went to the timber together, in the first instance? [1042—712] A. Yes, sir.

Q. You all came back together? A. Yes, sir.

(Testimony of Edgar H. Dammarell.)

Q. You all went to the land office to make your proof together? A. Yes, sir.

Q. Stood in the line together? A. I think so.

Q. And you all went to I. N. Smith's office together? A. I would not be sure about that.

Q. Well, were some of them—I understood you to say that Mr. O'Keefe took us to Mr. Smith's office?

A. Well, perhaps I did say that. I shouldn't have said it. Mr. O'Keefe and I went in there together, and I don't remember whether any of the rest of the party that went into the timber together was there.

Q. Then you all came together to make your final proof? A. Yes, sir.

Q. Do you remember who paid the expenses of that excursion?

A. That would be included, I presume,—

Q. The money was furnished you by Mr. O'Keefe, was it not? A. Yes, sir.

Q. Do you remember whether he gave you the money to pay the expense of the others that came down? A. No, sir.

Q. Was your hotel bill included in that, too?

A. Yes, sir; I presume so.

Q. And did you meet Mr. O'Keefe down here when you came to make proof?

A. I don't remember where I met him. In making final proof?

Q. Yes.

A. I wouldn't like to say positively where we met him. There was one trip we made down that I rode with him from Asotin to Lewiston; but whether that

(Testimony of Edgar H. Dammarell.)

was the final proof or not I wouldn't say. [1043—713]

Q. Did you get the money to make your proof here in Lewiston? A. Yes, sir.

Q. And who did you get it from?

A. From O'Keefe.

Q. And when did you come to Lewiston, with reference to the day you made proof—the same day, or the day before?

A. Now, I think that I had—the day I came to make proof, either in the advertisement or in the newspapers I seen that I had left out a letter. My full name is E. H. S., and I had signed it Edgar H. in one place, and being an alien I had to send back to North Dakota to get a copy of my citizenship papers. I don't remember the date, but that is the way it happened, and I think that at least was ten days, possibly ten days; I wouldn't swear to it.

Q. Now, when did you get the money with which you made your proof?

A. I got that the date set for the proof. I remember distinctly of that, of having carried it home with me to Asotin, and waiting until after giving the note.

Q. Now, where did you get this money from Mr. O'Keefe?

A. He gave it to me in the office—a little office to the left hand of the stairway as you come up the Lewiston National Bank building.

Q. Was it in the Directors' room of the Lewiston National Bank?

A. No, sir; it was on the second floor.

(Testimony of Edgar H. Dammarell.)

Q. The second floor? Was that Mr. Smith's office?

A. I don't think so. It may have been a portion of his office. I don't remember that there was anything there to indicate whose office it was.

Q. Now, was there any discussion there as to where you should say you received that money, or whose money it was? A. No, sir.

Q. There was nothing said?

A. No, sir. [1044—714]

Q. And you made your final proof with the money which Mr. O'Keefe gave you? A. Yes, sir.

Q. And do you remember how much he gave you on that occasion?

A. I don't remember positively. It seems to me it was something like \$400.00.

Q. And did you pay a location fee to anybody?

A. Yes, sir.

Q. When was that?

A. That was paid just before I went in to make my filing, I believe.

Q. Was it just before you made your filing, or just before you made your final proof?

A. Well, I won't swear to that.

Q. And did you ever give but the one note to Mr. O'Keefe? A. Just the one; that is,—

Q. In this transaction, I mean? A. Yes, sir.

Q. And were you told to whom to give the location fee? A. Yes—Dwyer located us.

Q. Well, was Dwyer there, or did you go and look him up?

A. Dwyer came out in the hall, and I gave him his

(Testimony of Edgar H. Dammarell.)

pay right in the hall.

Q. Just after O'Keefe had given you the money to pay it with? A. Yes.

Q. Do you remember the denomination of the money that Mr. O'Keefe gave you to pay that fee with? A. Yes, sir.

Q. What was it?

A. It was a hundred dollar bill.

Q. Do you remember whether it was a new hundred dollar bill or an old one? [1045—715]

A. I don't remember.

Q. Was it a crisp one? A. I don't remember.

Q. Now, I understood you to say you paid the money that Mr. O'Keefe gave you for final proof into the land office and made proof with it?

A. Yes, sir.

Q. How long after you made your final proof did you sell this land?

A. I sold the land the day following.

Q. And how much did you get?

A. I got \$150.00.

Q. Now, was that the first time you had ever talked about selling that land?

A. I had talked about selling it to my wife.

Q. Nobody else?

A. Well, I may have spoke about what I thought I could get for it.

Q. Now, to whom did you sell it?

A. I sold it to Jackson O'Keefe.

Q. And you got just exactly what Mr. Taylor told you you could get for it when he first talked with you?

(Testimony of Edgar H. Dammarell.)

A. That is the point that I don't positively remember what Mr. Taylor said. Mr. Prentice and I disagree as to what Mr. Taylor said at that time. We have talked it over several times, and I don't remember it as he does; possibly his memory is better than mine.

The SPECIAL EXAMINER.—Well, your best recollection is all you can give.

Mr. GORDON.—That's all we want, Mr. Dammarrell.

WITNESS.—Well, that's all I can give you.

Q. And I don't want you to testify to what Mr. Prentice's remembrance is.

A. Well, it is so long since there are things that I don't remember [1046—716] clearly, and I don't like to make statements positively.

Q. Now, state the circumstances surrounding your selling this land. State what took place the day you sold it.

A. Well, leading up to it, I was trying to make good fruit on 160 acres of dry land, and I was just as poor as I had ever been in my life, and with my family, and out of a position. I left a good position in the east, expecting to have one that would at least prove remunerative enough to support myself and wife and family until the property at Cloverland at that time would advance in value—practically an "eastern sucker"; and there was no way excepting manual labor, digging post holes and planting trees, and things of that kind.

Q. And you worked very hard at that, did you?

(Testimony of Edgar H. Dammarell.)

A. Yes, I certainly did; it was a case of support and making money honestly some way, and it was the only thing to do, and when this came up—this opportunity, as I thought,—why, I seized it.

Q. Now, who presented the opportunity?

A. Well, the first I learned of it was through the Taylors, and he told me that he thought I could possibly make the loan from Mr. O'Keefe.

Q. Now, this you are telling was before you took the land up? A. Yes.

Q. And as I understood you to say, you was poor and you needed the money?

A. I did—I needed it, all right.

Q. That was, as I understand, when Mr. Taylor first broached the subject to you? A. Yes, sir.

Q. This statement which you have just made?

A. Yes, sir.

Q. Now, at the time you sold and conveyed the land to Mr. O'Keefe I want to know the circumstances surrounding that transaction.

A. Well, I had accumulated some little bills—larger bills—[1047—717] possibly small in the eyes of some people—but something that worried me. I had accumulated a number of accounts in the way of provisions and clothing, and I debated the matter and talked it over with O'Keefe, and I had a friend in the East—it makes a long story of it—but on my judgment he had purchased some land at Cloverland, and he told me at any time that I needed money just to wire him or write him and he would make me a loan; or if I saw any business opportunity to let him know

(Testimony of Edgar H. Dammarell.)

and he would back me. The fact of my judgment proving so poor in the Cloverland proposition, I didn't like to take it up with him, and that left me so that I didn't have anybody to apply to to take care of my bills, and I thought the matter over and I thought I would write to him, to this friend of mine, and tell him that I had taken up a timber claim and borrow the money to take up this note.

Q. You intended to borrow money from your friend in the East to take up this note?

A. Yes, sir.

Q. How long was this note to run?

A. It was for a year, I believe; I wouldn't be sure.

Q. And was there any necessity to take it up right then?

A. Well, no more than to have it away from O'Keefe and have my title trusted only with the man that told me he could loan me money at any time; and I thought the matter over.

Q. Now, let me ask you, do you remember whether you didn't give the note to Mr. O'Keefe the day that you got the four hundred and some odd dollars?

A. Yes.

Q. That was the day it was?

A. That was the day.

Q. That was the day set for your proof?

A. Yes, sir.

Q. Which was about two weeks before you did make proof? A. I think so. [1048—718]

Q. The records show that.

(Testimony of Edgar H. Dammarell.)

A. Well, if the records show that I presume that's right.

Q. Now, proceed.

A. After thinking the matter over, and hearing so much of forest fires, I began to conclude—I came to the conclusion that if I didn't do so and if a forest fire ran through there it would practically leave the claim valueless, and put me in a worse position than before; and I decided I would sell it.

Q. So you went to Mr. O'Keefe, or did he come to you?

A. I don't remember; I couldn't say for certain. We talked it over. We rode from Lewiston together in a buggy.

Q. That was going home?

A. Coming home, after I had made my final proof.

Q. And did this conversation, or did this matter that you have been relating here, was that the subject of your conversation with Mr. O'Keefe going back from Lewiston? A. Yes, it was.

Q. You talked that over with him?

A. Yes, sir.

Q. Now, what did he say about it?

A. Well, he said he believed it would be a good proposition to hold on to, and he said if I could make the raise it would be satisfactory to him.

Q. All that he wanted, you understood, was to get his money back?

A. Yes, sir; I believe that was his idea.

Q. Now, you came to the conclusion, though, that you would sell it to him that day, did you?

(Testimony of Edgar H. Dammarell.)

A. Well, I about arrived at that conclusion in my mind.

Q. And you concluded the next day that you would? A. Yes, sir.

Q. And you did sell it to him?

A. Yes, sir, I did. [1049—719]

Q. And you got your \$150.00? A. I did.

Q. How did you arrive at the conclusion that there was \$150.00 coming to you?

A. Well, no more than he said that was all he would give.

Q. Now, who had kept the note of all the expenses that had been incurred in the taking up of this timber claim? A. Why, I presume he had.

Q. And you settled with him on his basis?

A. Yes, sir.

Q. I show you, Mr. Dammarell, a deed—the original deed—dated July 26th, 1904, made by Edgar H. Dammarell and wife Nellie M., conveying to J. O’Keefe, in consideration of one dollar, the north-east quarter of section 19, in township 38 north, of range 6 east, of Boise meridian, containing 160 acres, and signed, executed and acknowledged by Edgar H. Dammarell and wife before George W. Bailey, a notary public of Asotin, Washington, July 26th, 1904, and ask you if that is your signature to that deed?

A. Yes, sir.

Q. And that is your wife’s signature?

A. Yes, sir.

Q. And you both acknowledged it?

A. Yes, sir.

(Testimony of Edgar H. Dammarell.)

Mr. GORDON.—It is stipulated by and between the parties that the deed just identified by Mr. Edgar H. Dammarell was made, executed and acknowledged on July 26th, 1904, and that the same was filed for record in the office of the Recorder of Nez Perce County July 18th, 1906, at the request of the Lewiston National Bank, and recorded in Book 84 for the recording of deeds, at page 314.

Mr. TANNAHILL.—The defendants severally waive any further identification of the document offered, but object to the admission of the document in evidence in so far as the same relates to bills No. 406 and [1050—720] 407, upon the ground that the entry is not involved in either of these actions, and it is immaterial.

Mr. GORDON.—We offer in evidence the timber and stone lands sworn statement of Edgar H. Dammarell, dated April 25th, 1904, the notice of publication of the same date, the nonmineral affidavit of Edgar H. Dammarell of the same date, the testimony of Edgar H. Dammarell taken on final proof, and the cross-examination of Edgar H. Dammarell at final proof, all of which papers have been identified by the witness, the testimony of the witnesses at final proof, and the cross-examination of them, the receiver's receipt and the register's certificate, dated July 25th, 1904, a certified copy of the patent issued to Edgar H. Dammarell, dated December 31st, 1904, all relating to the entry of the northeast quarter of section 19, in township 38 north, of range 6 east, of Boise meridian.

(Testimony of Edgar H. Dammarell.)

Mr. TANNAHILL.—The defendants severally object to any of the documents being admitted in evidence in support of bills No. 406 and 407, upon the ground that the entry is not involved in either of these actions. And the defendants severally object to the admission in evidence of any of the final proof papers in support of either of the said bills, upon the ground that they are irrelevant and immaterial. The defendants severally waive any further identification of the papers offered in evidence.

Said documents were thereupon marked by the Reporter as Exhibits 28, 28A, 28B, 28C, 28D, 28E, 28F, 28G, 28H, 28I, 28J, 28K, 28L, 28M, 28N, 28-O, and 28P.

Mr. GORDON.—Q. Mr. Dammarell, I will ask you whether or not when Mr. Taylor first spoke to you it wasn't your understanding that in accepting the money that Mr. O'Keefe had to advance you, you were to take up this claim and convey it to him, or to whomsoever he would suggest?

A. No, sir.

Q. I will ask you if you had any reason to believe that Mr. [1051—721] O'Keefe had to advance you all this money when there was nothing in it for him?

Mr. TANNAHILL.—We object to that as immaterial, and leading and suggestive, and calling for a conclusion of the witness and not a statement of fact.

The last question was thereupon repeated by the Reporter.

WITNESS.—I believe that Mr. O'Keefe would

(Testimony of Edgar H. Dammarell.)

have advanced that much money to me. We were friends.

Mr. GORDON.—Q. That he was just interested enough in you to put up this money for you?

A. Yes, sir, I think so.

Cross-examination.

(By Mr. TANNAHILL.)

Q. As I understand, you had no contract or agreement to sell your land to Mr. O'Keefe, or anyone else, at the time you filed your sworn statement, or at the time you made your final proof? A. No, sir.

Q. Then the affidavit you made at the time you filed your sworn statement, "that I have made no other application under said acts; that I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit, and that I have not, directly or indirectly, made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself," that affidavit was true, was it?

A. It is true, as I understand the affidavit.

Q. And it was true at the time you made it?

A. Yes, sir.

Q. And at the time you filed your sworn statement?

A. Yes, sir. [1052—722]

Q. And at the time you made your final proof?

A. Yes, sir.

Q. Now, I understood you to say that Mr. O'Keefe

(Testimony of Edgar H. Dammarell.)

told you that you had better hold on to your land; that he thought it was a good investment, and it would be all right, or words to that effect?

A. Yes, sir; words to that effect.

Q. And did he not tell you when you wanted to sell it to him and when he did decide to buy it that he would give you \$700.00 for it, or \$150.00 over and above the fee?

A. I believe that was the true words, which netted me about \$100.00 or \$150.00.

Q. Now, didn't he also tell you that if you had an opportunity to sell it for more money, or could redeem the land within a year, he would give you an opportunity to do it? A. I beg pardon?

Q. Did he not also tell you that if you had an opportunity to sell it for more money, or could redeem the land within a year by paying him the money back that he had paid you, that you could do so?

A. Yes, sir, he did.

Q. That was your understanding?

A. That was my understanding.

Q. When you sold it to him? A. Yes, sir.

Q. Now, Jackson O'Keefe was a good man, was he not? A. Jackson O'Keefe was a good man.

Q. And was always willing to help his friends and his neighbors? A. Too much so.

Q. And he was always willing to help his friends and his neighbors? A. Yes, sir.

Q. And you believe that he would have furnished you that money, or he would have furnished his nephews that money, willingly, if they [1053—723]

(Testimony of Edgar H. Dammarell.)

had an opportunity to use it in that way?

A. Yes, sir, I believe he would.

Q. And you don't believe he would have asked any compensation for it, do you?

A. As a friend and as a man of poor business management I don't think he would.

Redirect Examination.

(By Mr. GORDON.)

Q. Have you made an affidavit for the defense in this case?

A. Ask the question, again, please.

Q. For any of the defense, or to be used for the defense in this case?

A. I made an affidavit at Asotin.

Q. Who did you make it for?

A. I made it for Mr. Miles—or Mr. Moore.

Q. Frank Moore, of the firm of Forney & Moore?

A. Yes, sir.

Q. When did you make that affidavit?

A. I don't remember the date.

Q. Wasn't it just before the trials at Moscow?

A. I don't remember.

Q. Have you a copy of that affidavit?

A. I have at home.

Q. Did he tell you what he wanted to use the affidavit for? A. I presume he did.

Q. Well, wasn't it in January, 1907, that you made that affidavit? A. It may have been.

Q. Do you remember who was with him when he came to see you?

A. I believe it was Mr. Rummens.

(Testimony of Edgar H. Dammarell.)

Q. Was the affidavit prepared when they came to your place? A. No, sir. [1054—724]

Q. Did you give them the facts and then they go out and write the affidavit and come back again?

A. How is that, please?

Q. Did you give them the facts and then they went off and prepared the affidavit and brought it back?

A. No, sir.

Q. Did they bring a typewriter along with them?

A. No, sir. I believe it was Mr. Rummens, or Mr. Shaughnessy; I believe it was Mr. Rummens, the County Prosecuting Attorney's office, and Mr. Moore, asked me those questions, and I answered them, and he prepared the statement.

Mr. TANNAHILL.—Here is the affidavit if you want to see it. (Handing same to witness.)

Mr. GORDON.—Q. In whose office was this?

A. At this Rummens; that was the County Prosecuting Attorney.

Q. Who else was in the office with you?

A. I don't remember.

Q. Was he in business with anyone at that time?

A. Mr. Rummens?

Q. Yes?

A. It was Rummens & Gose, I believe, or Gose & Rummens.

Recross-examination.

(By Mr. TANNAHILL.)

Q. Is that the affidavit that you signed for Mr. Moore in the presence of Mr. Rummens?

A. Yes, sir.

United States
Circuit Court of Appeals
For the Ninth Circuit.

THE UNITED STATES OF AMERICA,

Appellant,

No. 2209.

vs.

WILLIAM F. KETTENBACH, GEORGE H. KESTER,
CLARENCE W. ROBNETT, WILLIAM DWYER,
and FRANK W. KETTENBACH,

Appellees.

THE UNITED STATES OF AMERICA,

Appellant,

No. 2210.

vs.

WILLIAM F. KETTENBACH, GEORGE H. KESTER,
CLARENCE W. ROBNETT, WILLIAM DWYER,
THE IDAHO TRUST COMPANY, a Corporation,
THE LEWISTON NATIONAL BANK, a Corpora-
tion, THE CLEARWATER TIMBER COMPANY,
a Corporation, ELIZABETH W. THATCHER,
CURTIS THATCHER, ELIZABETH WHITE,
EDNA P. KESTER, ELIZABETH KETTEN-
BACH, MARTHA E. HALLETT, and KITTY
E. DWYER,

Appellees.

THE UNITED STATES OF AMERICA,

Appellant,

No. 2211.

vs.

WILLIAM F. KETTENBACH, GEORGE H. KESTER,
and WILLIAM DWYER,

Appellees.

Transcript of Record.

VOLUME IV.

(Pages 1201 to 1600 Inclusive.)

FILED

JAN 23 1913

Appeals from the District Court of the United States for the
District of Idaho, Central Division.

Nos. 2209, 2210 AND 2211.

**United States
Circuit Court of Appeals
For the Ninth Circuit.**

THE UNITED STATES OF AMERICA,

Appellant,

vs.

No. 2209.

WILLIAM F. KETTENBACH, GEORGE H. KESTER,
CLARENCE W. ROBNETT, WILLIAM DWYER,
and FRANK W. KETTENBACH,

Appellees.

THE UNITED STATES OF AMERICA,

Appellant,

vs.

No. 2210.

WILLIAM F. KETTENBACH, GEORGE H. KESTER,
CLARENCE W. ROBNETT, WILLIAM DWYER,
THE IDAHO TRUST COMPANY, a Corporation,
THE LEWISTON NATIONAL BANK, a Corpora-
tion, THE CLEARWATER TIMBER COMPANY,
a Corporation, ELIZABETH W. THATCHER,
CURTIS THATCHER, ELIZABETH WHITE,
EDNA P. KESTER, ELIZABETH KETTEN-
BACH, MARTHA E. HALLETT, and KITTY
E. DWYER,

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THE UNITED STATES OF AMERICA,

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Transcript of Record.

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(Pages 1201 to 1600 Inclusive.)

**Appeals from the District Court of the United States for the
District of Idaho, Central Division.**

United States
Circuit Court of Appeals
For the Ninth Circuit.

THE UNITED STATES OF AMERICA,
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WILLIAM F. KETTENBACH, GEORGE H. KES-
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DWYER, and FRANK W. KETTENBACH,
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Transcript of Record.

VOLUME IV.

(Pages 1201 to 1600, Inclusive.)

Appeals from the District Court of the United States for the
District of Idaho, Central Division.

(Testimony of Edgar H. Dammarell.)

Q. And the facts stated in this affidavit are substantially the same as you testified to on the stand?

A. Yes, sir.

Q. And they are true?

A. Yes, sir. [1055—725]

Mr. TANNAHILL.—The defendants ask to have the affidavit just identified marked Defendant's Exhibit "I" for identification.

Said affidavit was so marked.

Mr. GORDON.—Q. Did you know who he was representing? A. Yes, sir.

Q. Who?

A. I understood, I believe, that was following the trial, or at least I understood that.

Q. Who did you understand he was representing?

A. I only had a general knowledge of the trial and the way it was going. The newspapers told it.

Q. Well, who did you understand he was representing?

A. Kettenbach, Kester, Dwyer and O'Keefe.

Q. Was Mr. O'Keefe with him at that time that he made that affidavit? A. I don't think so.

Thereupon a recess was taken until two o'clock P. M. [1056—726]

At two o'clock P. M. the hearing was resumed.

**[Testimony of Samuel C. Hutchings, for
Complainant.]**

SAMUEL C. HUTCHINGS, a witness called in behalf of the complainant, being first duly sworn, testified as follows, to wit:

(Testimony of Samuel C. Hutchings.)

Direct Examination.

(By Mr. GORDON.)

Q. What is your name?

A. Samuel C. Hutchings.

Q. Where do you reside, Mr. Hutchings?

A. Lewiston, Idaho.

Q. How long have you resided in Lewiston?

A. Since 1877.

Q. Do you know the defendants, William Dwyer, George H. Kester and William F. Kettenbach?

A. Yes, sir.

Q. How long have you known them?

A. I have known them ever since they have been in the country.

Q. What is your occupation at the present time?

A. Patrolman.

Q. At Lewiston? A. Yes, sir.

Q. I will ask you whether you ever had any conversation with the defendants or any of them relative to taking up a timber claim? A. Yes, sir.

Q. When was that, Mr. Hutchings?

Mr. TANNAHILL.—The defendants object to any of the evidence of the witness relative to taking up a timber claim upon the ground that it is irrelevant and immaterial, the entry of the witness not being involved in either of the actions.

Mr. GORDON.—Answer the question. When was this?

A. Some seven or eight years ago.

Q. Now, with which one of the defendants was it you had a conversation? [1057—727]

(Testimony of Samuel C. Hutchings.)

A. I can't say, sir.

Q. It was one of the defendants, though?

A. Yes, sir.

Q. That I have mentioned? A. Yes, sir.

Q. What was said about you taking up a claim?

A. Well, they wanted me to—

Mr. TANNAHILL.—The same objection goes to all of the evidence of the witness, without repeating it.

Mr. GORDON.—Yes.

The SPECIAL EXAMINER.—Let it be noted that the objection will run to all the evidence of the witness.

WITNESS.—They wanted me to take up a timber claim, and I told them I didn't want any.

Mr. GORDON.—Q. And what else did he say?

A. And he said he would give me \$100.00 to take one up, or words to that effect.

Q. And what did you tell him?

A. I told him no, I wouldn't do it.

Q. Well, was anything said between you and the party that you talked with—

A. I told him I had a friend and he might do it.

Q. You told him you had a friend? A. Yes.

Q. And that? A. That he might do it.

Q. Did they ask you to see your friend?

A. I told him I would send my friend down.

Q. And did you? A. Yes, sir. [1058—728]

Q. Who was it? A. Rowland A. Lambdin.

Q. How long after this conversation did you see Mr. Lambdin?

A. I sent him over the same day or the next day.

(Testimony of Samuel C. Hutchings.)

Q. And you told him to go up and see whichever one of these men it was that spoke to you about it?

A. Yes, sir.

Cross-examination.

(By Mr. TANNAHILL.)

Q. I believe you say, Mr. Hutchings, you didn't know which one of the defendants it was?

A. No, sir, I don't know.

Q. And that conversation was to the effect that you could make \$100.00 out of it? A. Yes, sir.

Q. You don't remember the exact language that was used?

A. Well, if I remember right, they offered me that.

Mr. GORDON.—Q. Offered you what?

A. Offered me \$100.00 to take it up, or that I would get that much out of it, see?

Mr. TANNAHILL.—Q. That you could make that much out of it?

Mr. GORDON.—Q. Now, what was it, Mr. Hutchings?

Mr. TANNAHILL.—Well, just wait a minute; I am not through with the witness.

WITNESS.—I believe they told me that they would give me \$100.00.

Q. You don't remember exactly the language that was used in that conversation, do you?

A. No, sir, I don't remember the exact language.
[1059—729]

Redirect Examination.

(By Mr. GORDON.)

Q. Now, what was the expression that was used?

(Testimony of Samuel C. Hutchings.)

A. Well, they said—I am sure that they said that they would give me \$100.00.

Q. To take up a timber claim? A. Yes, sir.

Mr. GORDON.—That's all.

Mr. TANNAHILL.—That's all. [1060—730]

[**Testimony of Wynn W. Peffley, for Complainant.**]

WYNN W. PEFFLEY, a witness called in behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. Will you state your full name?

A. Wynn W. Peffley.

Q. Where do you reside, Mr. Peffley?

A. Boise, Idaho.

Q. How long have you resided at Boise?

A. I was born in Boise, and resided there about twenty years.

Q. Have you ever lived at Lewiston?

A. Yes, sir.

Q. When did you live at Lewiston?

A. I moved to Lewiston in 1899 and lived there until 1907.

Q. And what was your business seven or eight years ago? A. Mining.

Q. And what is your business now?

A. I am Field Engineer with the U. S. Reclamation Service.

Q. You are in the employ of the Government?

A. Yes, sir.

Q. Do you know Mr. William Dwyer?

(Testimony of Wynn W. Peffley.)

A. By sight; yes, sir.

Q. Do you know Mr. George H. Kester?

A. Yes, sir.

Q. Do you know Mr. William F. Kettenbach?

A. Yes, sir.

Q. All three of the gentlemen I have referred to are joined in this suit, and you know them?

A. Yes, sir.

Q. Did you ever have a talk with either of those gentlemen or all of them relative to a timber claim?

Mr. TANNAHILL.—The defendants severally object to any evidence [1061—731] of the witness, on the ground that it is irrelevant, incompetent and immaterial, the entry of the witness not being involved in these actions, and it is irrelevant and immaterial.

Mr. GORDON.—Answer the question.

A. I had a conversation regarding a timber claim with Mr. Kester.

Q. George H. Kester? A. Yes, sir.

Q. When was that? A. In the fall of 1903.

Q. And where was it? A. In Lewiston, Idaho.

Q. Now, was it on the street, or where was it?

A. It was on the street; it was on the corner of the Thiessen block.

Q. What was that conversation?

A. I asked him regarding taking up a timber claim, having heard something about it, and he informed me that there was a party leaving in a few days and I could accompany them, and that it would clear me about \$150.00.

(Testimony of Wynn W. Peffley.)

Q. Did you ever have any further talk with him about a timber claim? A. No, sir.

Q. Well, did you enter into an arrangement with him concerning a timber claim?

A. Nothing definite, no, sir.

Q. Was there any other conversation concerning a timber claim with Mr. Kester? A. No, sir.

Q. Do you remember whether you said anything to him or not at that time about taking up a timber claim?

A. Well, I don't remember the exact conversation regarding a timber claim. [1062—732]

Q. Well, did you speak with him about any other people that were interested in taking up a claim?

A. Well, I was speaking for several of my friends when we were talking about a timber claim.

Q. Who were those friends, do you remember?

A. Why, John P. Roos was one, and Louis Baird, and William Monroe, and I don't remember any of the rest; there were several.

Q. Did you ever talk with any of the other defendants after that about a timber claim?

A. A short time—two or three days after that Mr. Dwyer drove up in a buggy and asked me if we were ready to go; the party was going out on the train that afternoon; and I told him that we had decided to let the matter drop, and that was all the conversation we ever had.

Q. Had you ever had any talk with Mr. Dwyer about timber claims before? A. No, sir.

Q. Was he present when you had the talk with Mr.

(Testimony of Wynn W. Peffley.)

Kester? A. No, sir.

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mr. Peffley, I believe you said you went to Kester and asked him about taking up a timber claim?

A. Yes, sir.

Q. And he told you that there was some parties leaving in a few days? A. Yes, sir.

Q. And then did you ask him about what you would be able to make out of it?

A. Why, I naturally would; I believe I did.

Q. And he told you that you ought to be able to make \$150.00 out of it?

A. No; he said definitely; he said, "It will be worth \$150.00 [1063—733] to you."

Q. He said that, did he? A. Yes, sir.

Q. Now, you remember testifying at Boise, do you not, Mr. Peffley? A. Last spring?

Q. Yes. A. Yes, sir.

Q. I will ask you if you testified in substance as follows: "Question. I believe you said you went to Mr. Kester and asked him about it?" "Answer. I met him on the street and asked him, yes, sir." "Question. And you asked him something about the value of the claims?" "Answer. Well, I asked him what we would get out of it in case we took claims." "Question. And he said it ought to net you about \$150.00?" "Answer. Yes, he said it would net us about \$150.00." Is that about the facts?

A. Yes, sir.

Q. You don't remember the exact language that

(Testimony of Wynn W. Peffley.)

was used either by yourself or by Mr. Kester?

A. No, I don't remember exactly the words that was said.

Q. But that is the substance of it?

A. He conveyed the idea that we would get \$150.00 out of it.

Redirect Examination.

(By Mr. GORDON.)

Q. Well, why did you go to see Mr. Kester about a timber claim?

A. Well, I understood that they were locating upon, and timber claims were being taken all around, and we were there, and we thought that if it was possible that we would like to get into it and make something out of it. [1064—734]

[**Testimony of John P. Roos, for Complainant.**]

JOHN P. ROOS, a witness called in behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is John P. Roos? A. Yes, sir.

Q. Where do you reside, Mr. Roos? A. Boise.

Q. How long have you resided at Boise?

A. Just about a year.

Q. Where did you reside prior to that time?

A. Lewiston.

Q. How long had you resided at Lewiston?

A. About 26 years.

Q. Are you acquainted with the defendant William Dwyer, and the defendant George H. Kester, and the

(Testimony of John P. Roos.)

defendant William F. Kettenbach? A. I am.

Q. How long have you known those gentlemen?

A. I have known Mr. Kester and Mr. Kettenbach for—oh, practically all my life, and Mr. Dwyer a matter of two or three years—three or four—something of that kind.

Q. Did you ever have a talk with any of those gentlemen that I have named, or all of them, relative to taking up a timber claim?

Mr. TANNAHILL.—The defendants severally object to any evidence of the witness relative to taking up a timber claim as irrelevant and immaterial, the entry of the witness not being involved in the actions.

Mr. GORDON.—Answer the question.

A. I had a conversation with Mr. Kester.

Q. When? A. I don't remember the date.

Q. Well, as near as you can remember?

A. I couldn't say at all as to the dates. [1065—735]

Q. How long ago?

A. Oh, it must have been 1902 or 1903.

Q. Where did you have this conversation?

A. On the streets in this city.

Q. Will you state that conversation as near as you can remember it?

Mr. TANNAHILL.—The same objection.

WITNESS.—Why, Mr. Kester stopped me on the street and wanted to know if I had been up to a certain section of timber, describing the same by section, township, etc., and I asked Mr. Kester if that was the timber which he and Mr. Kettenbach owned

(Testimony of John P. Roos.)

which laid between Southwick and the river, and he said it was. He wanted to know if I had used my right; I told him no, and he wanted to know what I would take for it.

Mr. GORDON.—Q. Take for what?

A. My right. I told him I didn't know. I asked him what it was worth. He said he would give me \$200.00. I told him my right was worth more than that to me.

Q. Did you take up a timber claim? A. No, sir.

Q. Was there anything else said in that conversation which you had with Mr. Kester that you remember now? A. Not that I remember of, no, sir.

Mr. GORDON.—Take the witness.

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mr. Roos, you knew you couldn't sell your right, did you not, and that Mr. Kester couldn't buy your right? A. Not at that time.

Q. You didn't know whether you could or not?

A. No, sir.

Q. You know now that you couldn't sell your right, and that no [1066—736] one could buy it?

A. Yes, sir.

Q. Now, Mr. Kester asked you if you wanted to take up a timber claim, did he not?

A. He asked me if I wanted to sell my right.

Q. He asked you if you had ever used your right?

A. Yes, sir.

Q. Did he ask you if you wanted to use it?

A. Well, he didn't put it in that way.

(Testimony of John P. Roos.)

Q. You don't remember all that was said, do you, Mr. Roos? A. Well, perhaps not all of it.

Q. It has been a good while ago? A. Yes, sir.

Q. And it is possible that there was more said there that you don't remember? A. Yes, sir.

Q. And that you might have used different language from what you used at this time?

A. No, I believe not. I believe the language is practically the same. It may have varied a little.

Q. And you say this was in 1901, 1902 or 1903?

A. 1902 or 1903.

Q. Now, you say you can remember the exact language that was used during all these years?

A. The reason that I can remember it is because I have testified three or four times.

Q. And you are testifying now in accordance with what you testified at some other time?

A. As my memory goes.

Q. Your memory is very good, is it?

A. How is that?

Q. Your memory is very good, is it? [1067—737]

A. No, nothing exceptional.

Q. Do you think you could remember the exact language that was used eight or nine years ago, if you hadn't testified before? A. No, sir.

Q. Did you ever make any statement to any Government officials?

A. Did I ever make a statement?

Q. Yes?

A. Just prior to the first time that I was taken to Moscow Mr. Johnson stopped me on the street and

(Testimony of John P. Roos.)

asked me to come to his office, which I did two or three days later. He asked me regarding the conversation that I had with Mr. Kester, and I told him there was no conversation; that I knew nothing at all about it; and he told me all that I knew, and I then told him the exact conversation, and he took it down on paper and wanted me to swear to it, or sign it, which I refused to do.

Q. Mr. Johnson first repeated the conversation to you; was that it?

A. He asked me regarding it, and I told him I knew nothing about it, and then he repeated it to me.

Q. And then he repeated it to you?

A. Yes, sir.

Q. And you are testifying now to the conversation that Mr. Johnson repeated to you?

A. I am testifying to the conversation I had with Mr. Kester.

Q. Answer my question: Are you testifying now to the conversation that Mr. Johnson repeated to you?

A. I am testifying to my conversation with Mr. Kester and not what my conversation was with Mr. Johnson.

Q. Didn't you just say that Johnson repeated the conversation to you, and told you all you knew about this? A. He told me all regarding it.

Q. He told you all regarding it? [1068—738]

A. Yes, sir.

Q. Then he repeated this conversation with Mr. Kester to you, didn't he?

(Testimony of John P. Roos.)

A. Along the same lines; perhaps not just exactly.

Q. And that refreshed your memory, didn't it?

A. No, sir.

Q. Your memory has been refreshed on this matter several times, hasn't it? A. No, sir.

Q. But Johnson did repeat the conversation to you, didn't he? A. He outlined it.

Q. Before you told him anything about it?

A. He outlined it and told me regarding it, but he didn't know the exact situation or anything of that kind, or condition.

Q. But he repeated the conversation to you in substance, didn't he?

A. Yes, I believe so, in substance.

Q. The same as you have testified to here?

A. Well, perhaps not the same as I am testifying to it here, but the same in substance.

Q. The same as you are testifying here to, in substance? A. In substance, yes, sir.

Q. This was Miles S. Johnson who talked to you about this, was it? A. Yes, sir. [1069—739]

**[Testimony of Andrew J. Sherburn, for
Complainant.]**

ANDREW J. SHERBURN, a witness called in behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Andrew Sherburn?

A. Andrew J. Sherburn.

Q. Where do you reside, Mr. Sherburn?

(Testimony of Andrew J. Sherburn.)

A. I reside in Clarkson at present.

Q. Clarkson, Washington? A. Yes, sir.

Q. How long have you resided there?

A. I have been there off and on about 15 years, sir.

Q. Do you know the defendant William Dwyer?

A. I do.

Q. And did you ever have any conversation with him relative to taking up a timber claim?

A. Yes, sir.

Q. When was that?

A. That was during some time in the summer of 1904.

Q. And where was that conversation?

A. At Lewiston City.

Q. Now, what place in Lewiston?

A. Well, it was on the streets.

Q. What was said at that conversation?

Mr. TANNAHILL.—We object to any evidence of the witness relative to the conversation with any of the defendants regarding the taking up of a timber claim, upon the ground that no entry of the witness is involved in these actions or either of them, and it is irrelevant and immaterial.

The last question was thereupon repeated by the Reporter.

The SPECIAL EXAMINER.—Just answer the question.

WITNESS.—We were walking along the street below the bank, coming [1070—740] this way. Dwyer says to me, “Sherburn,” he says, “why don’t

(Testimony of Andrew J. Sherburn.)

you go and locate one of these timber claims?" I told him that I had located a timber claim; that is, a homestead and a timber claim; and I had no more rights; and, to use his own language, he says, "Hell, that don't make any difference," he says, "you can take it under an assumed name."

Mr. GORDON.—Q. What did you say?

A. I told him I guessed I would leave it out.

Q. Was that all that was said?

A. That was all.

Mr. GORDON.—Take the witness.

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mr. Dwyer is quite a fellow to joke, is he not, Mr. Sherburn? A. Yes.

Q. As a matter of fact, he knew that you had lived here for a long time, didn't he, Mr. Sherburn?

A. Yes, sir.

Q. Knew that you were acquainted with the Register and Receiver? A. Yes, sir.

Q. Knew that you had proved up on two claims before? A. Yes, sir.

Q. And he knew that you was favorably known and stood reasonably well in the community?

A. It was surprising to me that he should ask me to do such a thing.

Q. I see. Well, as a matter of fact you knew that he did that more in a joke than in any other way, didn't you? A. Yes, I think so.

Mr. TANNAHILL.—You believe so. That's all.

(Testimony of Andrew J. Sherburn.)

Redirect Examination.

(By Mr. GORDON.)

Q. Mr. Sherburn, have you ever sold your timber and stone claim? A. Yes, sir.

Q. To whom did you sell it?

A. I sold it to Kettenbach.

Q. Did you ever sell your homestead?

A. Yes, sir.

Q. Which Kettenbach did you sell it to?

A. I sold it—the homestead I sold to Kettenbach, and the timber claim I sold to the Wisconsin Logging Company. I have sold both of them.

Q. And when did you make that sale of the homestead?

Mr. TANNAHILL.—We object to that as immaterial. The claim is not involved in this proceeding.

Mr. GORDON.—Answer the question.

A. I sold my homestead about—well, some time this spring or along in the winter.

Q. You testified at the former trials of Kester and Kettenbach, did you? A. That what?

Q. You testified at the former trials of Kester and Kettenbach, did you? A. Yes, sir.

Q. You testified at Moscow, didn't you?

A. Yes, sir.

Q. And you didn't testify at that trial that you thought it was a joke, did you?

A. Well, no, I didn't, because I don't recollect whether the question was asked me at all. [1072—742]

[Testimony of F. D. Morrison, for Complainant.]

F. D. MORRISON, a witness called in behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. What is your name? A. F. D. Morrison.

Q. Where do you reside, Mr. Morrison?

A. Clarkston, Washington.

Q. How long have you resided at Clarkston?

A. About twelve years.

Q. Do you know the defendant William Dwyer?

A. Yes, sir.

Q. How long have you known him?

A. About twelve years.

Q. Did you ever have any conversation with Mr. Dwyer relative to taking up a timber claim, or engaging in the business of taking up timber claims with him?

Mr. TANNAHILL.—We object to the evidence along this line upon the ground that it is immaterial and irrelevant, no entry of the witness being involved in either of the actions.

The last question was thereupon repeated by the Reporter.

WITNESS.—Yes, sir.

Mr. GORDON.—Q. When was that, Mr. Morison?

A. I think it was in the early summer of '92 or '93, I have forgotten which.

Q. What year was that?

A. 1892 or '93, I have forgotten which.

(Testimony of F. D. Morrison.)

Q. You mean 1902 or 1903? A. 1902 or 1903.

Q. 1902 or 1903? A. Yes. [1073—743]

Q. How many years ago do you mean?

A. Sir?

Q. How many years ago was this?

A. Oh, it must have been ten years ago.

Q. Yes—it wasn't 17 or 18 years ago?

A. Oh, no.

Q. You said 1892 or 1893. A. Oh, yes.

Q. It was in 1902 or 1903, is that correct?

A. Yes, sir; the early summer of 1902, if I recollect right.

Q. Now, where was this conversation? Where did it take place?

A. Oh, in different places; in my house several times.

Q. Well, now, state what the conversation was.

A. Why, Mr. Dwyer wanted me to go in with him and engage in the timber business. He said if I would put up a grubstake and carry a compass or pace, that he got 40 acres out of every 160 he got, and he would give me half of it.

Q. And was that all that he said at that time?

A. Oh, no. No; he came there time and again to me to try and get me to go in with him and take this. He said he was broke like a dog, and he didn't have the price.

Q. And did he say anything about it being easy money?

A. Yes; he said it was like dipping up beer with a cup.

(Testimony of F. D. Morrison.)

Q. Now, what was this arrangement, that you would go in and buy timber like lumber people, or what?

A. All I was to do was to furnish the grubstake, and either pace or carry a compass, and I didn't know what he meant when he wanted me to pace.

Q. And what was he to do?

A. He didn't say. He said he had arrangements made with them for the money. I asked him where the money was coming from. He said he had arrangements with Kester and Billy. [1074—744]

Q. Kester and who?

A. Kester and Billy is the way he spoke of them—Billy Kettenbach. I asked him how we would proceed to procure the patents. He said there was always a lot of damned chair-warmers that you could buy at your own price.

Q. Now, did he tell you what he came to this country for?

A. Yes, sir; he said he came to this God-forsaken country to make a stake out of this white pine timber, and by God he was going to do it.

Q. Did he tell you what business he was in?

A. Cruiser.

Q. Did he tell you with whom he was associated in business? A. Yes, sir—Kester and Billy.

Q. Now, what was that about the 40 acres that he said? I didn't catch that.

A. He said he had arrangements made whereby he got 40 acres out of every quarter section that he procured a patent for—he got 40 acres—and he would

(Testimony of F. D. Morrison.)

split it in two and give me 20 if I would furnish the grubstake.

Q. Was this timber claims he was talking about?

A. Yes, sir.

Q. Did he tell you where he was to get the money?

A. From Kester and Billy.

Q. Did you ~~go~~ into that arrangement with him?

A. No, sir.

Cross-examination.

(By Mr. TANNAHILL.)

Q. Now, Mr. Morrison, you say that this was in 1902 or 1903 you had this conversation?

A. I forget just what date it was, George.

Q. It has been a good while ago, has it not?

A. Yes, it has been about ten years ago or such a matter.

Q. Well, 1902 or 1903 would be about seven or eight years ago. [1075—745]

A. It seems to me it was in the early summer of 1902.

Q. It wasn't earlier than 1902?

A. I ain't clear on the date, because I never had any experience with it.

Q. It is so long ago that you are not very clear as to what was said at the time, was it, Mr. Morrison?

A. Well, what was said, George, has been impressed on my memory pretty thoroughly off and on ever since.

Q. Now, you remember testifying at Boise, do you not? A. Yes, sir.

Q. In February last? A. Yes, sir.

(Testimony of F. D. Morrison.)

Q. I will ask you if you didn't testify as follows: "Question. Did he tell you with whom he had arranged for the money?" "Answer. Mr. Kester." "Question. Did he say anything further than just to say Mr. Kester?" "Answer. He called him George." Now, isn't that what you testified to there? A. Probably.

Q. Now, you testified to this before, and isn't this a fact, that you have never mentioned that Dwyer had any connection with Kettenbach regarding it?

(No answer.)

Q. And that was earlier than it is now, and your recollection was clearer then than it is now, wasn't it?

A. Well, I haven't thought of it hardly since, George.

Q. How?

A. I haven't paid any attention to it since.

Q. Then as a matter of fact he didn't say that he had any arrangements with Kettenbach, did he, Mr. Morrison?

A. Kester and Billy is the way he always worded it, and he said "We might as well have some of that money as them sons of bitches to get all of it."
[1076—746]

Q. Well, why didn't you testify at Boise that he said Kester and Billy?

A. Well, you didn't ask me.

Q. Well, weren't you asked who he had the arrangements with?

A. Well, I remember answering that question.

(Testimony of F. D. Morrison.)

Q. You remember answering that question?

A. I remember it, yes, sir, very well.

Q. You say now, Mr. Morrison, that he had the arrangements made with Kester and Billy?

A. Kester and Billy.

Q. Kester and Billy? A. Yes, sir.

Q. You are sure of that, are you?

A. I am sure of that.

Q. Then the stenographer took down your evidence wrong? A. Over there I might not have said it.

Q. You might not have said it?

A. I might not have used Mr. Kettenbach's name.

Q. Oh. Now, Mr. Morrison, you say that Dwyer said he had arrangements made for the money he wanted, didn't he? A. Yes, sir.

Q. And he had arrangements made for someone to locate on the land, or could make arrangements for someone to locate on the land?

A. Could make; yes.

Q. Did he say anything about filing scrip on it?

A. Yes; he said he could file scrip on part of it.

Q. And he said he had arrangements to file scrip on part of it?

A. Well, he didn't say what it was for. He said he had arrangements made for all the money he wanted.

Q. And he was going to take you in and divide up with you, regardless of the fact that he had arrangements made for all the money he wanted? [1077—747]

A. He said he would divide this if I would furnish

(Testimony of F. D. Morrison.)

the grubstake and carry the compass or pace.

Q. You are not on very good terms with Mr. Dwyer, are you?

A. Well, I am not on kissing terms, or anything of that kind.

Q. You and Dwyer haven't been on very good terms for some time?

A. Well, he would speak to me if I would let him, but I forbade him talking to me at all.

Q. When did you forbid him talking to you?

A. Oh, well, you heard me forbid him yourself once.

Q. Well, when was the first time?

A. Oh, five or six years ago.

Q. And you haven't been on good terms since you had some lodge troubles over there, have you?

A. Well, I wasn't in that lodge business at all, I told you before.

Q. You had trouble a long time ago?

A. It wasn't over lodge business that we had trouble over.

Q. Your wife and Mrs. Dwyer had some lodge troubles?

A. I never mixed in that at all. I wasn't in the house during the trial. I had nothing to do with it.

Q. But you haven't been on good terms with Dwyer for a good many years, have you?

A. No, nor I don't want to any more.

Q. You have no use for him?

A. No, not in the least.

Q. Do you think if he loses all his land that Kester

(Testimony of F. D. Morrison.)

and Kettenbach should lose theirs?

A. Well, I have nothing to say in regard to that business. [1078—748]

**[Testimony of Joseph H. Prentice, for
Complainant.]**

JOSEPH H. PRENTICE, a witness called on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. State your name, Mr. Prentice.

A. Joseph H. Prentice.

Q. Where do you reside, Mr. Prentice?

A. Asotin.

Q. How long have you resided in Asotin?

A. Well, in Asotin town four years.

Q. Where did you reside in 1904?

A. Cloverland, Washington.

Q. Are you acquainted with Charles W. Taylor?

A. Yes, sir.

Q. Did you know him in 1904? A. Yes, sir.

Q. Were you acquainted with Jackson O'Keefe?

A. Yes, sir.

Q. Did you know Mr. Kester, Mr. Kettenbach and Mr. Dwyer, the defendants in this case?

A. Yes, I am acquainted with those three, but only slightly with Mr. Kettenbach.

Q. You took up a timber claim in the spring of 1904, did you not?

A. I believe it was, yes, in the spring of 1904.

Q. Who first spoke with you about taking up this

(Testimony of Joseph H. Prentice.)

timber claim? A. Charles W. Taylor.

Q. Where did this conversation occur?

A. At my place in Cloverland.

Q. How far from your home did Mr. Taylor live?

A. Mr. Taylor was in Asotin then, I believe, I think he was living in Asotin.

Q. How far was that from where you lived?

[1079—749] A. It was fifteen miles.

Q. Did he come to your place of business?

A. Yes, sir, he came to my house.

Q. What did he say to you?

Mr. TANNAHILL.—The defendants severally object to any evidence of the witness relative to taking up a timber claim in so far as it relates to bills No. 406 and 407, upon the ground that the entry of the witness is not involved in these two particular actions.

Mr. GORDON.—Q. Now, what did he ask you?

A. He asked me if I wanted to make some money.

Q. What else did he say?

A. I told him yes, if it could be done honest, and then he spoke about taking up a timber claim.

Q. State all that was said.

A. I told him I had no money to make entry or prove up, and he says, "Uncle Jack will loan you the money," speaking of O'Keefe, and I says, "Are you sure?" And he says, "Yes. I am getting money from him and Ed. is getting money from him, and he told me he would loan it to you."

Mr. TANNAHILL.—The defendants severally object to any evidence of the witness relative to any

(Testimony of Joseph H. Prentice.)

conversation with Jackson O'Keefe, upon the ground and for the reason that O'Keefe is now deceased, and there is no way to either affirm or deny the statements made, in case any statement is made, and the defendants severally move to strike out the answer of the witness and the statement relative to what Jackson O'Keefe said. It will be understood that this objection goes to all of this line of testimony, without repeating it.

The SPECIAL EXAMINER.—Yes; the stenographer can note that it goes to all that line of testimony.

Mr. GORDON.—Who was Ed.—his brother?

A Ed. was his brother, yes. [1080—750]

Q. Did he tell you whether or not Mr. O'Keefe told him to come to see you?

A. No, I don't think he did; I don't recollect that he did.

Q. Was anything said at that time as to what you were to get out of this timber claim?

A. Well, he told me the thing would take about \$550.00 to go all through it, but Charlie never mentioned what I was to get, but O'Keefe did that.

Q. How long after that did you see O'Keefe?

A. Oh, some few days, when he came up from Asotin I went around to see him.

Q. You went to see him? A. I went to see him.

Q. What was your conversation with O'Keefe?

A. I told O'Keefe what Charlie had said, and he says, "Yes, that is right. I will loan you the money and take your note for everything," he says, "your

(Testimony of Joseph H. Prentice.)

straight note for a year for the filing money and the proving up money and the current expenses going up to see the timber, and also to pay my locator," and I says, "Do you think I can ever sell it," and he says, "Yes, you can sell it"; he says, "In case you get tired of the deal I will give you \$150.00 over and above all expenses."

Q. That was before you went to see the land?

A. That was before I ever went to see the land.

Q. How long after that did you go to see the land?

A. I believe it was next fall or summer.

Q. You went to see the land in October, did you not?

A. I believe it was the next fall, the following fall, yes.

Q. Who went with you to see the land?

A. Jack O'Keefe, Charlie Taylor, Ed. Taylor and Ed. Dammarell.

Q. Dammarell is your brother-in-law, is he not?

A. Yes, sir. [1081—751]

Q. In that conversation you spoke of do you remember whether or not you said to him, suppose you can't pay the note, and was that the time he said he would guarantee you the \$150.00?

A. I think I did mention that suppose I couldn't pay him up when the year was up, that he would take up the note and I was sure of \$150.00 at any rate.

Q. Then who notified you of the time you were to go to view this land? A. I believe it was O'Keefe.

Q. Did he come to see you, or did he—

A. Yes, he was up to Cloverland. He made trips

(Testimony of Joseph H. Prentice.)

back and forth, you know, from Asotin to Cloverland.

Q. And you came down to Lewiston? A. Yes.

Q. And went from Lewiston to Orofino?

A. Orofino.

Q. And from there to the timber?

A. And from there to Pierce City, and from Pierce City to the timber.

Q. Did the same parties you have mentioned before— A. We were all in one party from Asotin.

Q. Who paid your expenses from Asotin to the timber?

A. Well, when we got to Lewiston, as near as I remember, we paid our own fare down from Asotin to Lewiston on the stage, and when we got to Lewiston Jack furnished me with a ticket, and when we got to Orofino Dammarell and I eat together, and as near as I remember I paid one time and he would pay sometimes, and as near as I remember Jack paid sometimes, for all of our meals, and he paid for the horses.

Q. And sometimes you paid for your meals?

A. Yes, I am sure of that; I am sure I paid for my own and sometimes one or two of the other fellows.

Q. Who located you on a claim? [1082—752]

A. William Dwyer.

Q. Where did you first see Dwyer?

A. At Brown's cabin.

Q. That was the first time you ever met him?

A. Yes, sir, the first time I ever met him.

Q. Did he take you into the timber?

(Testimony of Joseph H. Prentice.)

A. Yes, sir.

Q. And when was the first that you ever heard of a location fee?

A. Well, Jack told us on the way up there that there would be a location fee, to pay our locator.

Q. And did he tell you how much it would be?

A. He said it would be \$100.00.

Q. When did you pay that?

A. I paid that the day, I believe it was, that I proved up, or the day I filed; I wouldn't swear which it was. It was the day I proved up.

Q. And you went back, after viewing the land with this party, you returned to your home at Asotin?

A. Cloverland.

Q. Then who notified you of the time you were to make your filing?

A. I think it was O'Keefe, O'Keefe or Charlie Taylor.

Q. And you came down to Lewiston?

A. Yes, sir.

Q. Do you remember who paid that expense?

A. Well, I guess it was Jack; Jack gave me some money.

Q. How much money did he give you?

A. I think about \$20.00.

Q. That was before you left Cloverland?

A. No, he didn't give it to me before I left.

Q. After you got here?

A. Either Asotin or Lewiston, I wouldn't say which.

Q. What were your expenses from Cloverland

(Testimony of Joseph H. Prentice.)

down to Lewiston?

A. Six bits from Asotin and fifty cents from there on down for [1083—753] stage ride.

Q. How long were you at Lewiston before you filed?

A. Four or five, or five or six days, pretty near a week, I know.

Q. Where did you spend your odd moments on that vacation?

A. Why, around town. I was in line the biggest part of the time, it seems to me like.

Q. Did you stay in line over night all those nights?

A. No, we would take turn about, sometimes Dammarell and I would go out on the streets and the Taylor boys would keep their seats and our seats, and then other times they would go, and we would change off like that, you know.

Q. What was the number of your position in line?

A. It was number sixteen before the homesteaders filed, and number four after the homesteaders filed.

Q. In others words, there were sixteen homesteaders ahead of you?

A. No, they weren't all homesteaders; I was number sixteen before the homesteaders filed, then I moved up to number four; that many filed on homesteads.

Q. You were the first timber and stone filer, were you? A. No, there was three ahead of me.

Q. Who stood immediately in front of you, do you remember? A. I do not.

Q. And who behind you?

(Testimony of Joseph H. Prentice.)

A. I don't know that. There is one thing I do remember very distinctly about that feature. There was some men at the rear end, and when I moved up in the line, one of them says, "Say, Prentice, that is your name, isn't it?" And I says, "Yes." And he says, "I will just give you five hundred dollars for that seat of yours," and I have often kicked my behind that I didn't take it. He offered me \$500.00 but I wouldn't take it, and I afterwards understood he wanted to file some scrip.

Q. Who was that gentleman? [1084—754]

A. I got it afterwards in an indirect way, I understood he was an agent of a man by the name of Fitzgerald.

Q. You remember filing on a timber claim, do you?

A. Yes, sir.

Q. I show you timber and stone land sworn statement, dated April 25, 1904, signed by Joseph H. Prentice. A. That is my signature.

Q. And ask you whether you signed and filed that paper in the land office at Lewiston on or about the date it bears?

A. Yes, sir, I signed that; that is my name.

Q. I show you nonmineral affidavit bearing the same date. Did you sign and file that?

A. I signed that too.

Q. I show you the testimony of Joseph H. Prentice given at trial proof, dated July 11, 1904, and ask you if you signed that?

A. That is my signature too.

Q. I show you the cross-examination of Joseph H.

(Testimony of Joseph H. Prentice.)

Prentice given at the same time. Did you sign that?

A. I signed that. I don't know when I signed those, but those are all my signatures.

Q. Why didn't you take this man's \$500.00, Mr. Prentice?

A. Well, I thought I could make more out of that.

Q. Wasn't it your understanding that you were to get \$150.00?

A. I knew I could get that, but I never promised that I would sell it for that.

Q. Didn't you feel under any obligation to Mr. O'Keefe.

A. No, sir, I did not, because I had given my note.

Q. But you hadn't given any note then.

A. No, but I knew I had to. I was negotiating money from my brother-in-law in the east. My intention was to keep that claim for awhile at least.

Q. Do you know how much timber was in this claim? [1085—755] A. No, I do not.

Q. Do you have any idea?

A. No, I have no idea. I was never in the woods before in my life, only in a little bush, until I got up in there.

Q. Were you employed at that time?

A. I was working around Cloverland.

Q. Doing what?

A. Contracting tree planting, planting apple trees.

Q. Were you employed regularly at that time?

A. No.

Q. Did you have any regular employment?

A. No, I had no regular employment.

(Testimony of Joseph H. Prentice.)

Q. And you didn't have the money with which to take up a timber claim at that time?

A. No, sir, I had not.

Q. Were you married? A. Yes, sir.

Q. Of what did your family consist then?

A. My wife and two children.

Q. Do you remember who prepared this sworn statement that I have shown you?

A. The first paper I filed? My paper that I had to take in?

A. Yes. A. Mr. Smith, I believe.

Q. I. N. Smith? A. Mr. I. N. Smith.

Q. Did you get it at his office?

A. In his office, yes, sir.

Q. Were you directed by someone to go there?

A. O'Keefe told me to go there and my papers would be all fixed up.

Q. You didn't pay any expenses for that paper, did you? A. No, sir. [1086—756]

Q. Do you remember whether or not you paid a filing fee?

A. Yes, I believe that was \$16.00, \$16.00 or \$17.00 or \$18.00, somewhere along there.

Q. Did you pay that, or did O'Keefe pay that?

A. No, he gave me the money.

Q. That was in addition to the \$20.00?

A. That was in addition to that; I think it was about \$20.00 he gave me.

Q. And this filing fee was in addition to that?

A. In addition to that.

Q. Do you remember whether the papers were al-

(Testimony of Joseph H. Prentice.)

ready prepared, waiting for you when you were in Mr. Smith's office?

A. No, I think I had to wait there some little time, but I don't know; I think there was somebody ahead of me, two or three in there.

Q. Are you sure of that?

A. I am sure there was one or two in there besides Mr. Smith.

Q. But I mean, weren't these papers already made out?

A. Well, I had to sit there, but whether they were made out after I went in there I couldn't say, but they were finally given to me.

Q. Did you know why it was you didn't file immediately after viewing the land? A. Yes.

Q. Why?

A. I was told that the state had sixty days' prior right, and we couldn't file until after they had made the state selections.

Q. Now, several months after that you made your final proof? A. Final proof, yes.

Q. Do you remember who notified you of that?

A. I think it was from the land office, I believe it was; I don't know I got—

Q. Didn't O'Keefe notify you?

A. I know I got a paper sent to me with it in.
[1087—757]

Q. Did O'Keefe notify you?

A. Maybe he did too, and I believe I got a notification from the land office.

(Testimony of Joseph H. Prentice.)

Q. Can you be positive whether O'Keefe notified you?

A. O'Keefe kept me posted on everything almost, and he probably did.

Q. And you came to Lewiston from Cloverland, did you? A. Yes, sir.

Q. Who paid your expenses that time?

A. I think I stood my own expenses down as far as Lewiston, I am sure I did; I did in every case, paid my way to Lewiston first, and it was in Lewiston I got the money.

Q. O'Keefe paid you the money after you got here?

A. No. The whole thing, you see, went in; it was counted \$50.00 for expenses for the whole transaction.

Q. Do you remember testifying at the trial of Kester, Kettenbach and Dwyer in February last?

A. Yes.

Q. Do you remember my asking you this question: "Do you remember where you got the money with which to pay that expense?" "Answer. Yes, sir." "Question. Who from?" "Answer. From Jack O'Keefe." "Question. Were you notified of the time that you were to make your proof?" "Answer. Yes, sir." "Question. By whom?" "Answer. O'Keefe." You said nothing about any advertisement or anything of the kind then.

A. Didn't you ask me down there, Mr. Gordon, whether I got a paper or not?

Q. You remember making that answer, don't you?

(Testimony of Joseph H. Prentice.)

A. Yes, sir.

Q. That was correct, wasn't it?

A. O'Keefe did notify me. [1088—758]

Q. (Reading:) "And you went to Lewiston from your home at Cloverland?" "Answer. Yes, sir."

"Question. Who paid that expense?" "Answer.

Of going from Cloverland down?" "Question.

Yes." "Answer. I paid that myself." "Question.

And do you remember how much you paid for this land," and so forth, is that correct?

A. That is correct.

Q. How much did you pay at the land office when you made your proof?

A. It was somewhere around \$400.00.

Q. Where did you get that money?

A. O'Keefe.

Q. When?

A. The day I proved up, I am pretty sure.

Q. You met him by arrangement?

A. It was right up there he counted it out.

Q. Where did he count it out to you?

A. In the corridor of the land office, it was then.

Q. Did you see where he got the money from?

A. No, sir, I did not.

Q. And you used that money?

A. To prove up.

Q. Did you go directly from where you and Mr. O'Keefe were where he gave you the money into the land office?

A. I think so; I hadn't enough, I know, when I went in there to prove up on.

(Testimony of Joseph H. Prentice.)

Q. What do I understand by that?

A. Well, he didn't give me enough money to prove up on.

Q. How much short was it?

A. Three or four dollars short.

Q. Did you go out and get that?

A. I went out and got that. [1089—759]

Q. The actual money you paid in the land office was the money you got from O'Keefe?

A. The money I got from O'Keefe, yes, sir.

Q. What did you do with your final receipt when you were given it at the land office, the receipt the receiver gave you?

A. The receipt the receiver gave me?

Q. Yes. A. I think Jack took it.

Q. Did you ever see it after that?

A. I think I have it now; I don't know either whether I have it now or not, but I know I seen it after that.

Q. Do you remember him bringing it back to you?

A. No, I don't think he did.

Q. Do you remember when the inspectors were around that Mr. O'Keefe brought that receipt back to you and told you it was best for you to have it?

A. I know I haven't it now; I have got the note now I know, but I don't think I have the receipt. I think I seen it after that, but I forget whereabouts it was.

Q. Now, do you remember him giving you any other money that day?

A. He gave me my location fee.

(Testimony of Joseph H. Prentice.)

Q. What did he say about that? Was that separate then? A. Yes, he gave me that by itself.

Q. When was that? A. About the same time.

Q. What did he tell you to do with it?

A. He told me to give it to Dwyer.

Q. Do you remember the denomination of the money he gave you? A. A hundred dollar bill.

Q. Was it a new one or an old one?

A. Yes, sir; it was a new one.

Q. And you gave it to Mr. Dwyer?

A. I did. [1090—760]

Q. Did you ever get any money out of the land?

A. I got \$150.00.

Q. When did you get that?

A. I forget just how long it was after that.

Mr. GORDON.—Mr. Tannahill, have you the deed there.

Mr. TANNAHILL.—Yes.

Mr. GORDON.—Q. Well, do you remember how long it was after you made your proof before you got your \$150.00? A. No, I do not.

Q. Well, was it a week, or two weeks?

A. Well, it wasn't very long, I know that.

Q. Whom did you get your \$150.00 from?

A. From Jack O'Keefe.

Q. Did you go up the time the other boys went up and made their deed?

A. I will tell you how that come along. I owed some money on my house, and the lumber company was crowding me for it, and they wanted me to go up there into the mountains, the Blue Mountains and

(Testimony of Joseph H. Prentice.)

file on a homestead and stay there until I had lived there long enough to commute, and then sell the land to the Blue Mountain Company, you see, and they had offered me work there in the mill, and I didn't want to take my wife and children up there, and I thought possibly I could get the money from the east and possibly hold this claim down for awhile and sell it; and my brother was thinking of investing some money in the east, and I wrote to him and asked him if he could help me out, and I asked Jack, and I said, "Jack, now you told me I could get \$150.00 any time I wanted it, and I would like to get that much money, but I don't want to sell it," and Jack says, "All right, I think we can fix it up." And he told me I could sign a bond for a deed, and that is what I thought I did sign until Mr. O'Fallon and Mr. Goodwin convinced me I had signed a warranty deed. [1091—761]

Q. And he gave you \$150.00?

A. Yes, sir, and I went into the lawyer's office and signed that, and didn't read it, and never looked at it, and he said, "Your wife will have to sign it," and I said, "All right," and he gave me \$10.00 there.

Q. You only got \$10.00 then, did you?

A. I only got \$10.00, but my *my* got \$140.00, so it was all the same.

Q. What did you do?

A. I came down here and got a saw and hammer and went up on Normal Hill and worked a day and a half, and then fell twenty feet and broke my arm,

(Testimony of Joseph H. Prentice.)

and I was awful glad I had the money then; it is still stiff.

Q. Did you ever look at the deed you signed?

A. No, sir, I never did; I have never seen that deed from that day to this, only just at a distance.

Q. Well, I will show it to you shortly. The day you made the deed was the day you got the \$150.00?

A. Yes, sir.

Q. And were the Taylor boys up there making deeds the same day you were?

A. No, sir, they were not.

Q. Did you and Dammarell go together?

A. No, sir. I went right in there and signed my name, and never read it, and jumped right on the stage and came to Lewiston to go to work.

Q. And he gave you the note back the day you made this deed?

A. No, I don't think I did get the note back; I don't think I got that note until some time after that; I had to keep after him to get it, and he says, "Oh, the time isn't up yet."

Q. You didn't pay any interest on it, did you?

A. No.

Q. How long after you signed the note did you get it back? [1092—762]

A. Well, I couldn't say, Mr. Gordon; I could not say.

Q. A year?

A. Well, sir, I don't know. I have got no idea of the number of weeks or months that was.

Q. Didn't you feel under obligation to Mr. O'Keefe

(Testimony of Joseph H. Prentice.)

to let him have the first chance for this land?

A. No, I did not; I told Jack, I told him right along that if I can sell it for more than that I am going to do it.

Q. Did you talk that way to him?

A. Yes, I did.

Q. Before you got the \$400.00?

A. No, no, after I got the \$400.00; but he told me I was sure of that much, you know.

Q. Do you remember, Mr. Prentice, making an affidavit before Mr. Goodwin, May 25, 1905?

A. I remember making an affidavit, yes.

Q. Now, did you, after you viewed the timber and before you made final proof, other than the conversation you first had with Mr. O'Keefe, did you have any other conversation about the sale of your land?

A. I don't think it; we might have.

Q. Do you remember having a talk with Mr. O'Keefe about the sale of your claim and he told you you was to get \$150.00 for it?

A. He told me I could get that.

Q. Did he tell you you could or that you would get \$150.00?

A. I think he told me, in fact I am sure he told me I could get that, that he would stand good for me getting \$150.00.

Q. Did he say that you could or that you were to get \$150.00 for your claim?

A. I am sure he said that I could get it.

Q. Do you remember reading this affidavit?

A. I don't think I ever read it.

(Testimony of Joseph H. Prentice.)

Q. Do you sign papers without reading them?
[1093—763]

A. As a rule I do, or did do it up till this here; I never have since.

Q. Do you remember whether you stated to Mr. O'Fallon that it was your understanding that you were to get \$150.00 for the claim, and "I got the money some time after making final proof from Mr. O'Keefe?"

A. Well, sir, I may have made that statement.

Q. Wasn't that true?

A. Mr. O'Fallon and Mr. Goodwin had me pretty near scared to death.

Q. What did they do to scare you?

A. They came up and said they was Department of Justice men, and that there was going to be a big law-suit over this thing, and they asked questions and put the answers in my mouth; but I can't remember.

Q. Wouldn't it be more likely that you would remember what happened six months ago than six years?

A. I may have made that statement, but Jack told me I could get \$150.00 over and above all expenses.

Q. Do you remember having a talk with O'Keefe going up on the train to the timber, about an agreement?
A. With O'Keefe on the train?

Q. Yes.
A. No, I don't recollect it.

Q. Do you remember him telling you that he couldn't stand to the arrangement that he had told Taylor to make with you, that he had information from Kester that that wouldn't be lawful?

(Testimony of Joseph H. Prentice.)

A. Jack said he couldn't make no arrangement, we couldn't have no pre-arranged bargain made; I remember him saying that, but where it was I don't know.

Q. What brought about that conversation?

A. He just told me, just volunteered that information.

Q. Did he tell you you couldn't have a contract or agreement to sell? [1094—764]

A. Yes, he said no contract or agreement could be made to sell it.

Q. Now, did you think you had done anything wrong that Mr. O'Fallon and Mr. Goodwin could frighten you about?

A. Well, I didn't know. I had seen in the papers where there was a whole lot of trouble in Oregon, and I didn't know what I had done.

Q. And you told them the transaction as you remembered it, did you?

A. As I remembered it then; yes, I think so.

Q. Did he give you a round trip ticket from Lewiston to Orofino, as you remember it?

A. Well, now, I don't know whether it was a round trip ticket or not; I don't think it was; I think it was just a ticket up there, one way.

Q. Now, I understood you to say all the money you paid in the land office when you made proof you got from Mr. O'Keefe; that he had given you all but \$4.00 in the hall, and when you went in the land office you were advised it was \$4.00 short, and you went back and received that \$4.00 and returned to the land

(Testimony of Joseph H. Prentice.)

office and made your proof? A. Yes.

Q. Was anything discussed between you and Mr. O'Keefe as to where you should say you got that money, when you made your proof?

A. I think he told me I was to tell them I borrowed it.

Q. Did he tell you that, or did he tell you to say it was your own money?

A. I think he told me I was to tell them I borrowed it from a friend.

Q. Do you remember whether he had a set of the final proof papers out there for you to go over?

A. I don't recollect.

Q. I show you a deed, signed Joseph H. Prentice and Emma A. Prentice, dated July 25, 1904, and ask you if you signed that paper?

A. That is my signature, yes. [1095—765]

Mr. GORDON.—Shall we make the regular stipulation?

Mr. TANNAHILL.—Yes.

Mr. GORDON.—It is stipulated by and between the parties hereto that Joseph H. Prentice and his wife, Emma A. Prentice, made and acknowledged a deed, dated July 25, 1904, conveying to J. O'Keefe, in consideration of \$1.00, lots 1 and 2, and the east half of the northwest quarter of section 18, in township 38 north of range 6 east, Boise meridian, containing 156.60 acres; that said deed was signed in the presence of Edward H. Dammarell and George W. Bailey, and was acknowledged before George W. Bailey, notary public of Asotin, Washington, July 26, 1904,

(Testimony of Joseph H. Prentice.)

and filed for record January 18, 1906, at the request of the Lewiston National Bank, and recorded in Book No. 84 of Deeds, at page 313, in the office of the recorder of Nez Perce County, Idaho.

Mr. GORDON.—Do you remember Mr. Dammarell going with you when you made that deed?

A. No, sir; I do not.

Q. You gave Mr. O'Keefe a note for how much?

A. \$550.00.

Q. And that was after you made your final proof?

A. I forget when I signed that note; I think it must have been, though, after I made my final proof, or that day maybe.

Q. The same day, just after?

A. It was some time right along there.

Mr. GORDON.—We offer in evidence timber and stone land sworn statement of Joseph H. Prentice, dated April 25, 1904, the nonmineral affidavit of Joseph H. Prentice, the notice for publication, the testimony of Joseph H. Prentice given at final proof, the cross-examination of Joseph H. Prentice at final proof, all of which papers have been identified by the witness, the testimony of the witnesses, given at final proof, and the cross-examination of them, the receiver's receipt and the register's certificate, dated July 11, 1904, certified copy of the [1096—766] patent issued to Joseph H. Prentice, and dated December 31, 1904, all relating to the entry of lots 1 and 2, and the east half of the northwest quarter of section 18, township 38 north of range 6 east, Boise meridian.

Said above mentioned documents were thereupon

(Testimony of Joseph H. Prentice.)

marked by the stenographer as Exhibits 29, 29A, 29B, 29C, 29D, 29E, 29F, 29G, 29H, 29I, 29J, 29K, 29L, 29M, and 29N.

Mr. TANNAHILL.—The defendants severally waive any further identification of the papers, but severally object to the admission of the papers in evidence in so far as they relate to bills No. 406 and 407, upon the ground that the entry of the witness is not involved in these two particular actions. And the defendants severally object to the admission in evidence of the documents designated as the final proof papers in support of either of the actions, upon the ground and for the reason that they are matters occurring long after the filing of the sworn statement and relating solely to the final proof.

Mr. GORDON.—Q. Mr. Prentice, you never made any other deed than the one I have shown you to this claim? A. No, sir.

Q. You never were asked to? A. No, sir.

Q. From whom did you receive the note that you gave Mr. O'Keefe? A. Jack gave me that back.

Q. When? A. Oh, quite a while after that.

Q. Anything said about it?

A. Well, I asked him for it. It was after Mr. O'Fallon and Mr. Goodwin were up there, and I had thought all along that it was just a bond for a deed that I had signed, and after they said it was a warranty deed then I got after Jack to give me my note back.

Q. Did you accuse him of slipping one over on you?
[1097—767]

(Testimony of Joseph H. Prentice.)

A. Yes, I told him he did.

Q. He was a pretty honorable man, wasn't he?

A. I always thought so.

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mr. Prentice, Mr. O'Keefe told you that you would have a year, or until the maturity of that note, to redeem that land and sell it to anyone else, didn't he?

A. Yes, he told me I would have until the note ran out.

Q. And when the note ran out you found you didn't want to redeem it and let it go?

A. I didn't wait for the note to run out.

Q. He told you he wouldn't record the deed until after that time?

A. Yes, sir; he told me that deed wouldn't be recorded, or the bond for a deed.

Q. He told you he wouldn't record that until you found out whether or not you wanted to take up the claim? A. Yes, sir.

Q. What was your conversation with Jack regarding your sale of the land, that is, after you proved up and when you decided to sell it?

A. Well, George, I never decided to sell it.

Q. You never decided to sell it?

A. I told O'Keefe he had told me I could get \$150.-00, and I said I would like to get it to pay off the lumber company for the lumber in my house, and I says, "Is there any way I can get it from you without selling the place?" And he said, "Yes, by giving me

(Testimony of Joseph H. Prentice.)

a bond for a deed," and that is what I supposed I had signed.

Q. And you had no contract or agreement to sell it to him?

A. No, sir; I did not; I knew I could get so much, but I never had told Jack I would sell it for that.

Q. Do you remember of making an affidavit before George H. Rummonds, in Asotin, on January 21, 1907? (Showing witness paper.) [1098—768]

A. Yes, sir; that is my signature.

Q. And the affidavit you made there is substantially in accordance with your evidence here?

A. Yes, sir.

Q. And the statements you made there are true?

A. True, to the best of my knowledge.

Q. And, as I understand you, the affidavit you made when you filed your sworn statement, to the effect that "I have made no other application under said acts; that I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit, and that I have not, directly or indirectly, made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself," that affidavit was true, was it?

A. It was at that time, yes, sir.

Q. And it was true at the time you made your final proof? A. Yes, sir; I intended to keep it.

(Testimony of Joseph H. Prentice.)

Q. And it is still true? A. It is still true.

Q. Mr. Gordon, asked you how you were notified as to the time to make final proof. I will ask you if you don't remember of receiving some copies of the *Pierce City Miner*, a newspaper published at Pierce City, with the notice of the time and place of making final proof in it?

A. Yes. I told Mr. Gordon I got some paper, I don't remember what paper, but I got some paper with the notices in.

Q. And you never understood at the time you filed your sworn statement, or at the time you made final proof, that you had any understanding with Jack O'Keefe or anyone else to sell him the land?

A. No. [1099—769]

Q. You had no understanding that you were to sell it to Kester, Kettenbach or Dwyer?

A. Kester, Kettenbach and Dwyer's name was never mentioned.

Q. And if you had had an opportunity to sell it to anyone for a certain price after you made final proof you would have felt at liberty to sell it to them, would you? A. Yes, I certainly would.

Redirect Examination.

(By Mr. GORDON.)

Q. Mr. Prentice, who presented that affidavit to you? A. Which one is that?

Q. That Mr. Tannahill has shown you?

A. Why, George Rummonds wrote that out.

Q. Well, who presented it to you? Who was with

(Testimony of Joseph H. Prentice.)

Mr. Rummonds when you talked it over?

A. He used to be prosecuting attorney of Asotin County.

Q. Did anybody talk it over with you? Was Mr. Frank Moore there?

A. Frank Moore was there; Frank Moore and Rummonds.

Q. And they took you down there and talked it over with you? A. Yes, took me up in the office.

Q. What did they tell you they wanted with that affidavit?

A. I don't know that they told me anything they wanted with it.

Q. Did you read that affidavit?

A. They asked me questions, Mr. Moore, I think, asked me the questions, and I told them as near as I could recollect what it was at that time, and George Rummonds typewrote it.

Q. He asked you the questions and you answered them and they wrote the answer down?

A. They wrote it down.

Q. And that is what you signed and swore to?

A. That is what I signed; I didn't swear to that.

Q. Didn't you swear to that affidavit? [1100—770] A. I don't think it.

Q. Were you sworn at all?

A. I don't recollect now.

Q. Did you read it over after it was written out?

A. No, sir, I didn't. Is that sworn to?

Mr. TANNAHILL.—Yes; before George H. Rummonds, Notary Public.

(Testimony of Joseph H. Prentice.)

WITNESS.—I have no recollection of swearing to that at that date, I have not.

Mr. TANNAHILL.—The defendants severally ask that the affidavit just referred to and identified by the witness Joseph H. Prentice be marked Defendants' Exhibit "J," for identification.

Said affidavit was thereupon marked by the stenographer as Defendants' Ex. "J," for identification.
[1101—771]

[Testimony of John H. Long, for Complainant.]

JOHN H. LONG, a witness called on behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. What is your name? A. John H. Long.

Q. Where do you reside, Mr. Long?

A. Lewiston.

Q. How long have you resided at Lewiston?

A. About seven or eight years.

Q. Were you living at Lewiston when you filed on a timber claim? A. Yes, sir.

Q. How long had you lived at Lewiston in March, 1903?

A. I couldn't say without figuring it up, but just to estimate it, possibly two or three years.

Q. What was your occupation in March, 1903?

A. Why, at that time I was just working around; I was working first at one thing and then another, and tending to investments, and so forth.

Q. Who were you working for?

(Testimony of John H. Long.)

A. I believe at the time I was working for Mr. Emory or Mr. Colby.

Q. Mr. Fred Emory?

A. Yes; Fred Emory and Mr. Colby.

Q. Were they in partnership at that time?

A. I think they were.

Q. What were you doing for them?

A. Just common labor.

Q. How much were your wages?

A. Why, I think about two and a half a day.

Q. Were you married at that time? A. No, sir.

Q. How old are you now?

A. About thirty-three, I think. [1102—772]

Q. Who first spoke with you about taking up a timber claim?

Mr. TANNAHILL.—The defendants severally object to any evidence of the witness relative to taking up a timber claim in so far as it relates to bills No. 388 and 407, upon the ground that the entry of the witness is not involved in those two particular actions, and it is immaterial.

Mr. GORDON.—Q. Who spoke first with you about taking up a timber claim?

A. Mr. Robnett, I believe.

Q. Mr. Clarence W. Robnett? A. Yes, sir.

Q. Now, where were you when he talked with you?

A. Why, I think he called me into the bank there, the Lewiston National Bank.

Q. What part of the bank?

A. He was bank teller then.

Q. Did you talk at the window, or did you go back

(Testimony of John H. Long.)

into the directors' room?

A. Well, part of the time I was at the window, and part of the time in the directors' room. I think he made me a proposition from the bookkeeper's window; he was bookkeeper, that was it.

Q. Did you just happen in there casually, or had someone sent you to him?

A. No; I had spoken to him some time prior to that about taking up a claim, and at that time he didn't have no claims. I guess he hadn't entered into the timber business, or something, and then afterwards he thought he had a good proposition for me and called me in.

Q. Now, what was the proposition?

A. Could I read from a statement I wrote myself?

Q. What is that?

A. Could I read this thing from a statement? I could read it right through, and I have it all written down. [1103—773]

Q. You tell it as you remember it, and then if you have a statement here that you want to read, all right.

A. The proposition he made, as near as I can remember, was that he would locate me on a timber claim, and he would loan me the money with which to prove up with, and he would charge me \$125.00 for location fee, I believe, something like that, and I was to pay \$200, I believe, for the use of this money and the risk, as he explained it, in making this loan. I think he said he had no interest in it excepting that he must have a little bonus, as he called it, or something like that, to insure him a little something for

(Testimony of John H. Long.)

his trouble, and for the man that furnished the money, that loaned this money, that had money to loan for that purpose, *a* wanted a little something out of it.

Q. What else?

A. And I think that this was to be incorporated into a mortgage after the final receipt was received.

Q. Yes. What else?

A. And on the day of proving up, why, we went into the bank.

Q. Who is we?

A. My father and brother and I went into the bank and gave a note one day after date.

Q. One day after date?

A. Yes, a note payable one day after *day*, for the amount of the acreage fee.

Q. Now, what is your father's name?

A. F. M. Long.

Q. Francis M.? A. Francis M. Long.

Q. And your brother's name is what?

A. Benjamin F. .

Q. What were you to do with your land after you made your final proof?

A. Well, there was nothing said as to what we was to do with it [1104—774] any more than he said he might be able to sell it and realize a profit of about \$800.00 on it.

Q. Didn't he guarantee you so much?

A. No, he said, I may sell it for \$800.00.

Q. Was he to have the right to sell it for you?

(Testimony of John H. Long.)

A. No, not particularly; anybody had the right to sell it.

Q. I am speaking now about what your conversation was.

A. I asked him if I had the privilege of selling this to anybody I wanted to, and he said I had.

Q. You didn't have any money to buy a timber claim with, did you? A. What is that?

Q. You didn't have any money with which to buy a timber claim, did you? A. No, not to buy one.

Q. Had you talked this matter over with either Mr. Emory or Mr. Colby? A. I had not.

Q. They didn't tell you to go to see Mr. Robnett?

A. No, sir.

Q. You knew they were dealing in the timber business, didn't you?

A. Why, only to the extent of buying saw logs was all.

Q. Didn't you know they were locating people on timber claims? A. I didn't at that time.

Q. Did you learn afterwards that they were?

A. Why, I heard some time that Mr. Emory located or had been locating, but I don't know that he located anybody.

Q. Now, what arrangement was made about locating you?

A. Why, he said that Mr. Robnett said that Mr. Benton might locate us.

Q. Do you know Mr. Benton, Mr. William B. Benton? A. Yes, sir.

Q. Do you know the relationship he bears to the

(Testimony of John H. Long.)

Kettenbachs? A. Yes, sir. [1105—775]

Q. What is it? A. Cousin, I think.

Q. Cousin of which Kettenbach?

A. Will, I think.

Q. William F. Kettenbach? A. Yes, sir.

Q. Do you know Mr. Joel H. Benton?

A. Yes, sir.

Q. He is the father of William B. Benton, isn't he? A. Yes, sir.

Q. Do you know whether or not he is an uncle of Mr. Kettenbach? A. I think he is.

Q. Are you related to any of them?

A. No, sir.

Q. Are you related to Robnett? A. No, sir.

Q. Who made the arrangements with Mr. Benton for you? A. Mr. Robnett, I believe.

Q. Who notified you of the time to go to the timber? A. Mr. Robnett.

Q. Now, state where you started from to go to the timber, and where you went after you left Lewiston.

A. Well, we started from Lewiston and went to—

Q. Well, now, who was with you?

A. Well, there was Mr. Knight.

Q. Mr. Ed. Knight?

A. Mr. Ed. Knight, and Mr. Benton and my father and my brother and I, and Mr. Harrington, and a stranger was going up in the bunch.

Q. Mr. Ellsworth Harrington? A. Yes, sir.

Q. He is a relative of Robnett's, isn't he?

A. Yes, sir. [1106—776]

Q. What is the relationship there?

(Testimony of John H. Long.)

A. Brother in law.

Q. All of that party went along together?

A. Yes, sir.

Q. What was the first town you came to that you stopped at?

A. Kendrick, I believe, and took a rig across to near Dent.

Q. Who paid the expenses of that trip?

A. My father and I and my brother paid our expenses, our own expenses.

Q. Were they advanced to you by Mr. Robnett?

A. No, sir.

Q. All right. Then you went to Dent. How far beyond Dent did you go?

A. Possibly three or four miles.

Q. How near to the land did you get?

A. About twelve miles.

Q. You weren't within twelve miles of the land?

A. No, sir.

Q. None of you? A. No, sir.

Q. All of the party stopped there?

A. Yes, sir.

Q. That was yourself,—

A. That is, in that party that started to see the land from the house down below Dent there was myself and my father and brother, and Mr. Dent and Mr. Harrington and the stranger I am speaking of, I don't know what his name is now.

Q. This Ellsworth Harrington is Ellsworth M. Harrington? A. Yes, sir.

Q. Why didn't you go to the land?

(Testimony of John H. Long.)

A. We was going through the timber, and Mr. Benton turned around to us and Mr. Harrington, and said whether we expected to go through and [1107—777] see this timber claim, and he told him he certainly did and so he argued that—

Q. Who argued?

A. Benton; he argued that it wasn't necessary to go through to see the timber.

Q. What was the argument he put up?

A. Well, he argued that we had made an attempt to see the timber, and that was all that was necessary, and said that there was some women that didn't even make attempts, and he said he wasn't going to stand for any more of that, they had to make an attempt, he said, to see the timber; and there was considerable argument which I can't remember only the high points.

Q. Didn't he tell you, that under the arrangement under which you were taking up that timber it wasn't necessary for you to see the land?

A. Why, I think probably he did mention that.

Q. What was that arrangement that he referred to? If it was a transaction you were interested in and were going to put up your money to buy it, why wasn't it necessary for you to see it?

A. I don't know.

Q. You were satisfied with not seeing it, and went back?

A. Well, we wasn't satisfied, but we didn't know a thing about the law or the regulations of the land office at that time, and we thought it wasn't neces-

(Testimony of John H. Long.)

sary, and went back.

Q. But, Mr. Long, if you start out with a real estate man to buy a house or a farm, and he gets within twelve miles of the place and stops and says, "you don't need to see that; under the arrangements we have it is not necessary to see it," would you come back and pay him the money for that farm?

A. No, I don't think I would.

Q. So the five of you came back without viewing the land?

A. Yes, sir; Mr. Harrington said he had seen his before.

Q. And for that service you paid Mr. Benton how much? [1108—778]

A. I was to pay him in that mortgage; it was to cover the \$125.00.

Q. What were you paying him that for?

A. That was to be the location fee.

Q. He didn't locate you, did he?

A. Well, he said that we was passing through timber, he said the timber was like certain timber we passed through, and we took his recommendations and actually really took his refusal to take us; he insisted on not taking us, and consequently we had to give in to his argument and go back.

Q. And notwithstanding that you went to the land office when you made your original filing and swore that you had personally examined that land?

A. I couldn't say what I swore to; I don't know.

Q. You signed a sworn statement, did you not?

A. I signed some kind of a statement, yes, sir.

(Testimony of John H. Long.)

Q: I mean at the land office.

A. Yes, sir, at the land office.

Q. And then you and your party returned to Lewiston? A. Yes, sir.

Q. And how long after that did you go to the land office and make your filing? A. I don't remember.

Q. Was it the next day or six months or when?

A. Why, some little time, but I couldn't say just exactly.

Q. It wasn't any great length of time?

A. Oh, no, no great length of time.

Q. I show you timber and stone land sworn statement signed John H. Long, dated March 26, 1903, and ask you whether or not you signed that paper and filed the same in the land office on March 26, 1903?

A. That is my signature.

Q. And that is the paper you signed and swore to?

A. I think so. [1109—779]

Q. Did you notice in reading that paper: "That I have personally examined said land, and from my personal knowledge state that said land is unfit for cultivation." When you swore to that you didn't know anything about it, did you?

A. I didn't pay any particular attention to it at all; I don't think I read it.

Q. And as to the other part that is in that paper, you have no recollection of those matters either, have you? A. No, sir.

Q. Who prepared that sworn statement for you?

A. Why, John Nickerson prepared some of them.

Q. John who?

(Testimony of John H. Long.)

A. Nickerson, that is, the first filing papers; I don't know whether it was that one or not.

Q. Now I show you nonmineral affidavit bearing the same date, signed John H. Long. Is that your signature to that paper? A. Yes, sir.

Q. Did Mr. Nickerson also prepare that?

A. Why, if that is one of the first papers.

Q. That you filed with the other one on the same date. A. Yes, he prepared that.

Q. And the notice for publication at the same time?

A. Yes, sir.

Q. I show you the testimony of John H. Long given at final proof, dated June 18, 1903, and ask you if you signed that paper?

A. That is my signature there.

Q. And the cross-examination?

A. That is my signature.

Q. Taken at the same time. That is your signature to all of those papers I have shown you?

A. Yes, sir.

Q. Who told you to go to Mr. Nickerson's office for those papers? [1110—780] A. Mr. Robnett.

Q. Then after you viewed the land or had gone up on your attempt to view it you came back and saw Mr. Robnett before you filed? A. Yes, sir.

Q. Were you given the description of that property, or were you just told to go to Mr. Nickerson's office and get your papers?

A. I think Mr. Nickerson had the description at his office.

Q. Do you know where he got it from?

(Testimony of John H. Long.)

A. No, sir.

Q. Then you didn't take it there? A. No, sir.

Q. Were the papers already prepared when you went to Mr. Nickerson's office?

A. No, I think not; I think he prepared them while I was there.

Q. Did you pay him for preparing those papers, or did Mr. Robnett pay him?

A. No; I paid him.

Q. Are you sure of that?

A. Yes, I am sure I paid him.

Q. How much did you pay him?

A. Well, now, let me see. It may not have been those papers I paid him for; probably I paid him for writing the mortgage, that was it.

Q. You didn't pay him anything for those papers, did you?

A. I don't believe I did; I won't say positive, but I don't think I did.

Q. Then you filed them in the land office?

A. Yes, sir.

Q. Did anyone go to the land office with you?

A. Just us three was all, my father and brother and I.

Q. And before you filed those papers you say you saw Mr. Robnett? Just before you filed them you saw Mr. Robnett, and he told you to go to [1111—781] Nickerson's office?

A. Yes, he told me to go to Nickerson's office.

Q. Where did he tell you that?

A. In the bank building.

(Testimony of John H. Long.)

Q. What part of the bank building?

A. The bookkeeper's window, I think.

Q. And later on you made your final proof, did you not? A. Yes, sir.

Q. Did you see Mr. Robnett between the time you made your original filing and your final proof, to talk with about this claim?

A. Why, I seen him in regard to getting the acreage fee to prove up with.

Q. How much was that?

A. It was about \$400.00.

Q. When was that, relative to the date you made your proof?

A. Why, I think it was the same day on which the proof was made, final proof.

Q. Where did you see him then?

A. Well, I went into the bank.

Q. What part of the bank?

A. The bookkeeper's.

Q. Is there where you transacted your business, or did you go back to the directors' room?

A. No, we didn't go back there.

Q. Your father and brother were with you then?

A. Yes, sir.

Q. And he gave you the money right through the bookkeeper's window? A. Yes, sir.

Q. Was it in cash? A. Yes, sir.

Q. And you say it was \$400.00?

A. Yes, sir. [1112—782]

Q. Did your father and brother get their money at the same time? A. Yes, sir.

(Testimony of John H. Long.)

Q. Did you sign a note then or later?

A. Signed a note then.

Q. For how much? A. Four hundred dollars.

Q. And you went from the bank directly to the land office? A. Yes, sir.

Q. And you paid in the money that Mr. Robnett gave you? A. Yes, sir.

Q. And you made your proof? A. Yes, sir.

Q. Was any discussion had between you and Mr. Robnett as to what you should say at the land office as to where you received that money or whose money it was?

A. I don't think so, that I remember definitely.

Q. Do you remember, when you went to the land office to make your proof, this question was asked you on cross-examination, question 16: "Did you pay out of your own individual funds all the expenses in connection with making your filing, and do you expect to pay for the land with your own money?" "Answer. Yes. Yes." Was that true?

A. I borrowed the money.

Q. The next question: "Where did you get the money with which to pay for this land, and how long have you had the same in your actual possession?" "Answer. I earned it working in saw mill and other places." Was that true? A. No.

Q. Now, was that question discussed between you and Mr. Robnett then?

A. Why, there may have been something said about it, but I don't remember what it was exactly; I can't remember what it was. There was something

(Testimony of John H. Long.)

said about it. He said it was a matter of form and it would probably be better to say it is your own money. He didn't say for us to [1113—783] say that, but something like that; I wouldn't be positive though as to what the conversation was.

Q. They gave you a receiver's receipt at the land office, did they, when you paid that money in?

A. Yes, sir.

Q. What did you do with that?

A. Well, I took the receiver's receipt, and I executed to Mr. Robnett a mortgage covering the \$400.00 which I borrowed and the \$125.00 location fee, and the \$200.00 bonus, and gave him a note for the same, and a mortgage on the land, and I turned over the receipt with the mortgage; he wanted that as security for the thing some way or other.

Q. Did you pay Mr. Benton his location fee, or did you just include that in the mortgage and trust that to Mr. Robnett?

A. I included that in the mortgage and trusted it to Mr. Robnett.

Q. And you gave a promissory note to Mr. Robnett, of the same date you made your proof?

A. Yes, sir.

Q. I show you promissory note, dated Lewiston, Idaho, June 18, 1903, signed John H. Long, payable to Clarence W. Robnett, for \$710.00, in one year, and I will ask you if you signed that note and delivered it to Mr. Robnett the date that it bears?

A. Yes, sir.

Q. The note is endorsed, "Pay to W. F. Ketten-

(Testimony of John H. Long.)

bach, without recourse. Clarence W. Robnett," and "Without recourse on me. W. F. Kettenbach." Will counsel for the defendants stipulate that those signatures on the back are Clarence W. Robnett's and W. F. Kettenbach's?

Mr. TANNAHILL.—Yes.

Mr. GORDON.—We offer that note in evidence, and ask that it be copied into the record.

Said note was thereupon marked by the stenographer as Exhibit 30, and the following is a copy of the same:

[Exhibit No. 30.]

“\$710.00 Lewiston, Idaho, June 18, 1903.

One year after date, without grace, for value received, I [1114—784] promise to pay to the order of Clarence W. Robnett, at THE LEWISTON NATIONAL BANK at Lewiston, Idaho, Seven hundred ten and no/100 Dollars, in United States Gold Coin, with interest after date in like Gold Coin, at the rate of one per cent. per month until paid. And if suit be instituted to collect this note, or any part thereof, I promise to pay the additional sum of Seventy dollars as attorney's fees in said suit. P. O. Lewiston.

No. ——. Due ——. JOHN H. LONG.

(Endorsed on face of note): Paid.

(Endorsed on back of note): Pay to W. F. Kettenbach without recourse.

CLARENCE W. ROBNETT.

Without recourse on me.

W. F. KETTENBACH.”

(Testimony of John H. Long.)

Mr. TANNAHILL.—The defendants severally object to the admission of the note in evidence in so far as it relates to bills No. 388 and 407, upon the ground that the entry of the witness is not involved in either of these actions, and it is immaterial.

Mr. GORDON.—Q. Did you turn your receiver's receipt over to Mr. Robnett as soon as you got it?

A. Possibly a few hours after.

Q. And then did you execute any other papers at that time besides that note and the mortgage?

A. Not at that time, but after.

Q. Now, what other paper did you execute?

A. Well, I made one deed in escrow to a timber company; I don't remember the name of the company at the present time. I think a man by the name of Hayden was agent of the company, and—

Q. Wait a minute now. How long was that after you made and executed this mortgage that you have referred to?

A. Well, it was some time after that; I couldn't say.

Q. A month or so?

A. Well, it was more than a month, I think; two or three months, [1115—785] possibly.

Q. The reason I say, the note is dated and the mortgage is dated June 18, 1903, and I have the fragments here of what appears to be an original deed, dated August 3, 1903, and I think the name in that is James M. Hayden. Is that the paper you have reference to?

A. Yes, sir, that is the paper.

(Testimony of John H. Long.)

Mr. TANNAHILL.—Where did you get that, Mr. Gordon?

Mr. GORDON.—I found it somewhere. Didn't you ever see it before?

Mr. TANNAHILL.—No.

WITNESS.—I executed one like that. That is my brother's, and I executed a deed like it, which I have lost or destroyed.

Mr. GORDON.—Q. That was cancelled, was it not? A. Yes, sir, they didn't take up the deed.

Q. With whom did you make that arrangement?

A. Why, there was a man by the name of Gulick, and this man Hayden himself come to see me in regard to this, and I wouldn't be positive, but I think a man by the name of Jansen was along with him at that time.

Q. Did Robnett talk with you about that?

A. No, sir.

Q. I show you an escrow agreement, signed August 3, 1903, made by John H. Long with a man named James N. Hayden. Was that the agreement that went along with that deed that you have referred to? A. Yes, sir.

Mr. GORDON.—We will offer this agreement, identified by the witness, in evidence, and ask that it be copied into the record.

Mr. TANNAHILL.—That is all right.

The stenographer thereupon marked the above-mentioned document as Exhibit 30a, and the following is a copy thereof:

[Exhibit No. 30A.]**“ESCROW AGREEMENT.**

This Agreement, made this 3d day of Aug. 1903, by and between [1116—786] J. H. Long, party of the first part, and J. M. Hayden, Manistee, Mich., party of the second part,

WITNESSETH, That the party of the first part, in consideration of the sum of One Dollar (\$1.00) to him in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, has placed in escrow, in THE LEWISTON NATIONAL BANK, of Lewiston, the following deed, to-wit: S. $\frac{1}{2}$ of N. W. $\frac{1}{4}$ and S. $\frac{1}{2}$ of N. E. $\frac{1}{4}$ of Sec. 24 Town. 39, N.—R. 3 East B. M.

Said deed to be delivered by said bank to J. M. Hayden, Manistee, Mich., or his assigns, on the payment of \$1.00 per M. for white pine and fifty cents (50 cts.) per M. for Red fir and cedar, price not to go below eleven hundred and thirty dollars \$1130.00 on or before Nov. 1st, 1903. And it is hereby further agreed and understood that in the event that said J. M. Hayden fails to pay the amount above specified on or before the 1st day of Nov. 190 , then and in that event the said bank shall return the deed above described to J. H. Long party of the first part on his demand and this agreement shall be null and void. If a sale is made by the second party, he shall receive as special compensation for said sale five (5) per cent. commission of the price above named.

(Testimony of John H. Long.)

Time is the essence of this agreement.

JOHN H. LONG.

JAMES M. HAYDEN.

Witnesses:

E. D. THOMAS.

C. O. WASHBURN.

THE LEWISTON NATIONAL BANK of Lewiston agrees to accept this escrow, according to the terms above stipulated.

Cashier." [1117—787]

Mr. GORDON.—Q. Now, why wasn't that carried out? A. I couldn't say.

Q. Whom did you deliver that to, and where did you leave the escrow,—at the Lewiston National Bank?

A. No, sir, I left that at the Commercial Trust Company bank.

Q. What was this Mr. Jansen's name, Christian name?

A. I think he was commonly known as Charlie Jansen.

Q. Wasn't he at that time a partner of Mr. Robnett's? A. I couldn't say.

Q. Didn't you know he was associated with Mr. Robnett in business? A. No, sir.

Q. Wasn't this Mr. Gulick also associated with Mr. Robnett in business?

A. I didn't know at the time; I heard afterwards he was.

Q. Didn't you know that Mr. Jansen was associated

(Testimony of John H. Long.)

with him in business?

A. No, sir, I didn't know that.

Q. You say you didn't know why that transaction didn't go through? A. No, sir.

Q. And those papers were just returned to you?

A. Yes.

Q. Without any remark whatever?

A. Yes, sir.

Q. Now, I find a deed here, signed John H. Long, and acknowledged before D. Needham, Notary Public, dated July 21, 1904, to William F. Kettenbach, by John H. Long, consideration \$815.00, which appears to have been cancelled. Do you remember executing that paper? A. Yes, sir.

Q. For whom did you execute that?

A. William Kettenbach.

Q. What was the transaction relative to your executing that paper? [1118—788]

A. Well, at the expiration of the term of the mortgage, at the end of the one year, why I received notice from Mr. Kettenbach, stating that he had purchased my mortgage and note, and wanted me to come in and settle, and at that time I was busy and I didn't think I would pay any attention to it, and after discussing the matter with people who I supposed to be my friends,—I don't know who they were now,—they advised me that I had better do something to get shut of the mortgage, that there may be a law in this State holding my property afterwards, if I should get any, holding it good for that mortgage, if I didn't pay it and settle it some way.

(Testimony of John H. Long.)

Q. Who were these people that advised you?

A. I think I talked to a fellow by the name of R. S. Anderson that used to be around here. And so I told Mr. Kettenbach then, I wrote Mr. Kettenbach, —I was busy at the time,—and I told him that I had seen the land and I didn't regard it as worth the amount of the mortgage, and in order to settle, if he would give me the amount of money I had been out on it, he could have it, I would make him a deed for it, and I figured this to be about \$30.00, that I was out in expense going to see the land, making the effort to sell it, and then I paid the filing fee of \$11.00, and the first fee of \$8.00; and so he wrote or seen me afterwards,—I think he seen me afterwards,—and said he would take that proposition, provided I would knock off a few dollars to pay for filing the papers, and I considered that better than nothing, so I made him a deed. And I went up to Mr. Needham to have this deed made that you just exhibited, and in making the description, I didn't have the final receipt, and so I didn't have the description accurate. I believe part of the land was described in lots, and he described it without regard to lot, and so Mr. Kettenbach gave me the final receipt then which he had in his possession, and told me to go back up to Mr. Needham's and get another deed drawn and let the description be taken from that.

Q. This deed that you have is the one that was concerned at that time?

A. Yes, sir, at that time; I took that deed and just— [1119—789]

(Testimony of John H. Long.)

Q. I show you a deed, signed John H. Long, dated July 21, 1904, and acknowledged on that day before D. Needham, and conveying certain property to William F. Kettenbach. Is that the deed that you have referred to as having made in place of the one that was cancelled? A. Yes, sir.

Mr. GORDON.—Put that into a stipulation, will you?

Mr. TANNAHILL.—It is stipulated and agreed by and between the parties hereto that John H. Long, on July 21, 1904, conveyed to William F. Kettenbach, by a warranty deed, consideration \$1.00, lot 2 and the southwest quarter of the northeast quarter, and the south half of the northwest quarter of section 24, township 39 north, range 3 east, Boise meridian, containing 150.14 acres, in what was then Shoshone County, Idaho, but is now Nez Perce County, Idaho, which deed was properly signed and witnessed by Daniel Needham, and W. B. Phillips, and signed by John H. Long, and duly acknowledged on July 21, 1904, before Daniel Needham, notary public in and for Nez Perce County, State of Idaho, and filed for record July 23, 1904, at the request of W. F. Kettenbach, and recorded July 23, 1904, in Book 26 of Deeds, at page 278, by Stanley P. Fairweather, Ex-officio Recorder in and for Shoshone County, State of Idaho.

Mr. GORDON.—Q. How much did you get out of this? A. \$27.50, I think.

Q. And that was the time you made that deed?

A. Yes, sir.

(Testimony of John H. Long.)

Q. And the note was returned to you at that time?

A. Yes, sir.

Mr. GORDON.—We offer in evidence the timber and stone land sworn statement of John H. Long, dated March 26, 1903, the nonmineral affidavit of John H. Long, the notice for publication, the testimony of John H. Long given at final proof, and the cross-examination of John H. Long at final proof, all of which papers have been identified by the witness; the testimony of the witnesses at final proof, the [1120—790] cross-examination of said witnesses, the receiver's receipt and the register's certificate, dated June 18, 1903, certified copy of the patent issued to John H. Long, dated August 3, 1904, all relating to the entry of lot 2, and the southwest quarter of the northeast quarter, and the south half of the northwest quarter of section 24, township 39 north of range 3 east, Boise meridian. We also offer in evidence the certified copy of the receiver's receipt, just described, dated June 18, 1903, and recorded at the request of William F. Kettenbach June 22, 1903, in the office of the recorder of Shoshone County, Idaho. We also offer in evidence certified copy of the mortgage referred to by the witness, dated June 18, 1903, made by John H. Long, to Clarence W. Robnett, to secure a note of \$710.00, which was signed and executed by John H. Long, and acknowledged before John E. Nickerson, Notary Public, June 18, 1903, and filed for record at the request of William F. Kettenbach June 22, 1903, in the office of the recorder of Shoshone County, Idaho.

(Testimony of John H. Long.)

Said above-mentioned documents were thereupon marked by the stenographer as Exhibits 30B, 30C, 30D, 30E, 30F, 30G, 30H, 30I, 30J, 30K, 30L, 30M, 30N, 30-O, 30P, 30Q, and 30R.

Mr. TANNAHILL.—The defendants severally waive any further identification of the papers, but severally object to the admission of any of the papers in evidence in support of bills No. 388 and 407, upon the ground and for the reason that the entry of the witness is not involved in these two particular actions. And the defendants severally object to the admission of any of the final proof papers in evidence in support of either of the actions, upon the ground that they are irrelevant and immaterial, and matters relating solely to the final proof, and occurring long after the filing of the sworn statement.

Mr. GORDON.—Q. Do you remember whether or not, in your first talk with Mr. Robnett, he explained to you that you could realize about \$800.00 over [1121—791] and above all your expenses, and that he was figuring with a company who would buy your timber? A. Yes, sir.

Q. And that you asked him when the timber would be sold, and he said some time before the end of the year? A. Yes, sir.

Q. Did you make the arrangements for your father and your brother at the same time to take up claims?

A. Yes, sir.

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mr. Long, as I understand you, you had no ar-

(Testimony of John H. Long.)

rangements to sell your claim to Mr. Robnett, before you made your final proof?

A. To Mr. Robnett, did you say?

Q. Yes. A. No, sir.

Q. You had no arrangements to sell it to Mr. Kettenbach?

A. No, sir.

Q. Or to Mr. Dwyer or Mr. Kester?

A. No, sir.

Q. And you had had no conversation or talk with any of the defendants regarding the purchase of your land prior to the time you made your final proof?

A. No, sir.

Q. And the first talk you had with Mr. Kettenbach about selling it to him was something like a year after you made your final proof, is that right?

A. Yes, sir.

Q. Then the affidavit you made when you filed your sworn statement, in substance, "That I have made no other application under said acts; that I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit, [1122—792] and that I have not, directly or indirectly, made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself," that affidavit was true, was it?

A. Yes, sir.

Q. True at the time you made it, and at the time you made your final proof, and is still true?

A. Yes, sir.

(Testimony of Francis M. Long.)

Mr. TANNAHILL.—That is all.

Mr. GORDON.—That is all.

At this time an adjournment was taken until ten o'clock to-morrow morning. [1123—793]

On Thursday, the first day of September, 1910, at ten o'clock A. M., the hearing was resumed.

[Testimony of Francis M. Long, for Complainant.]

FRANCIS M. LONG, a witness called in behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Francis M. Long?

A. Yes, sir.

Q. Where do you reside, Mr. Long?

A. I live out here about twelve miles southeast of here.

Q. Where did you reside in March, 1903?

A. Here at Lewiston.

Q. And you are the father of John H. Long?

A. Yes, sir.

Q. And Benjamin— A. Yes, sir, he is my son.

Q. Benjamin F., is it? A. Yes, sir.

Q. Who first spoke to you about taking up a timber claim, Mr. Long?

Mr. TANNAHILL.—The defendants severally object to the evidence of the witness relative to his taking up a timber claim, in so far as the evidence relates to bills No. 406 and 407, upon the ground that it is irrelevant and immaterial, the entry of the witness not being involved in either of those actions.

(Testimony of Francis M. Long.)

Mr. GORDON.—Answer the question, Mr. Long. Who first spoke with you about taking up a timber claim?

A. Why, it was Mr. Robnett, I rather think.

Q. Now, where was that conversation? [1124—794]

A. It was here in Lewiston.

Q. At the bank, or on the street, or where?

A. Why, I think it was down by the bank there somewhere.

Q. Was it in the bank?

A. Well, I don't know as to that hardly; it was somewhere about the bank or near about, as well as I remember.

Q. Did Mr. Robnett broach the subject to you, or did you broach the subject to him?

A. Well, him and my sons was talking some about it, and the way I rung in we was all talking together there; I don't know just how that came, but I rather think we broached the subject.

Q. And what did he say—as near as you can remember?

A. Well, I don't remember exactly what the conversation was, really. He said they had some claims up there that could be taken.

Q. Who did he say had some claims?

A. I don't remember who.

Q. Didn't he mention any names?

A. I think it was Benton and Knight that really had the claims for to be located on.

Q. And what else was said?

A. I don't really remember much about that, what was said.

(Testimony of Francis M. Long.)

Q. Well, did you have the money with which to take up a timber claim?

A. No, sir; I borrowed it of the bank.

Q. Now, was there any arrangement made at this conversation as to where you were to get your expenses, or who was to pay them, or where you were to get the money for paying for this land?

A. Well, I just borrowed it of the bank for to pay for it, and aimed to pay it back.

Q. No, but I want to get at what was said at the first time you talked to Mr. Robnett about this timber claim, about where you were to get the money for your expenses, and to pay for the claim? [1125—795]

A. Well, he was to loan me the money for to pay the expenses and to pay the Government fees.

Q. And who was to pay the expenses of the locator? Was that discussed?

A. Well, no; I was to get the money for to pay the whole business there.

Q. Now, how long was this before you located—this conversation that you had?

A. Oh, I couldn't say exact—a few days.

Q. And was there any understanding as to how much you were to get out of this claim?

A. No, sir.

Q. Wasn't anything said about that?

A. No, sir.

Q. What were you to do with the claim after you got it?

A. We intended for to pay this claim out—get

(Testimony of Francis M. Long.)

money and pay this claim out. I had money of my own that I couldn't get a hold of at that time, is the reason I borrowed this money. We aimed to pay it out and keep the claim.

Q. What were you going to keep it for?

A. Well, for the value of the timber.

Q. At this first conversation you had with Mr. Robnett didn't he tell you that he was assembling a number of timber claims for a company, and that the company would take it before July?

A. No, sir, I think not.

Q. Are you sure of that?

A. I am pretty sure there was nothing said about a company, or anything of the kind.

Q. Well, did he say he had a party that would buy the claim by July? A. No, sir.

Q. You never testified to that at any place? [1126—796] A. I think not, sir.

Q. Were you before the Grand Jury at Moscow?

A. Yes, sir.

Q. Will you say whether or not you testified to that at that time?

A. I don't think I did. I don't remember it if I did.

Q. I will ask you whether or not when you were before the Grand Jury at Moscow, in 1905, whether this question was asked you: "And he (and the context relating to Robnett) stated to you, did he not, at that time, that he had a party that would buy the claim by July?" "Answer. Yes, would buy." "Question. And he said he had a party that would buy

(Testimony of Francis M. Long.)

the claim after you proved up?" "Answer. Yes, the claim—he would sell the claim for us if we wanted to sell it." Is that right? Do you remember whether those questions were asked you and that answer made by you?

A. No, sir, I don't remember it if I did. I might have done it. It has been quite a while ago, and I haven't thought anything about the question at all, or anything of the kind. I might have possibly done it. I don't know.

Q. How much money was Mr. Robnett to advance you, or to loan you, whichever way you want to put it?

A. I don't know exactly the amount that we did get, but he let us have money enough for to pay the expenses.

Q. Did he give it to you just as you needed it, or did he give it to you all in one lump sum?

A. He gave it all in one lump, and we gave our note.

Q. Did he give you the location fee at the same time, or did he give you that at two different times?

A. Well, I don't know but what I paid that out of my own money; I believe I did.

Q. How much was that?

A. I don't remember that for sure. I don't know what it was. [1127—797]

Q. Well, do you understand what I mean by the location fee? Do you think I mean the land office filing fee?

A. No; you mean the location fee to take us up to

(Testimony of Francis M. Long.)

look at the claims, don't you?

Q. The fee for the locator?

A. The fee for the locator.

Q. Yes—who paid that?

Mr. TANNAHILL.—Benton or Knight.

WITNESS.—Benton and Knight.

Mr. GORDON.—Q. Now, who paid that?

A. Well, that was got all in a lump there and with the money.

Q. Didn't Robnett pay that and charge it up to you? A. Well, sir, I don't hardly think it.

Q. Well, how far from the claim you located upon did you live at that time?

A. How far from the claim?

Q. Yes?

A. I couldn't say exactly to the mile, but I lived here at Lewiston.

Q. Was that 60 or 70 miles away?

A. Well, yes, it must be.

Q. And do you remember starting with a party to view this land before you made your filing?

A. Yes, sir.

Q. Who was of that party?

A. Well, John Long and Ben. Long was two; Billy Benton and Ed. Knight; and I rather think one of the Harrington boys.

Q. Ellsworth Harrington?

A. I couldn't saw which one of the Harrington boys it was. Anyway, it was one of the Harrington boys,—I wasn't much acquainted with the boys no way; and I think one or two more; I couldn't say

(Testimony of Francis M. Long.)

how [1128—798] many more; there was quite a little bunch of us.

Q. And where did you go from Lewiston?

A. Well, we went from Lewiston to Kendrick, and then along up to Steiner's; that was just a little below Dent's.

Q. Where else did you go?

A. And we went on up towards this claim, on up the river.

Q. How far up towards the claim did you stop?

A. Well, I couldn't tell you just exact; probably somewheres along nine or ten or twelve miles.

Q. You were not within nine or ten or twelve miles of the claim; is that correct? A. I guess not.

Q. Now, what was the occasion or the reason that you didn't go to the claim?

A. Well, Billy Benton said it wasn't necessary for us to go any farther. We would have went on and calculated to go on, but he said it wasn't necessary to go; we had done as much as most of any of the rest had done, and that that was all that was necessary.

Q. And so you protested, and then returned to Lewiston? A. Yes, sir.

Q. Did he tell you that under the arrangement you had with Robnett it wasn't necessary for you to go and see the claim?

A. No, I don't know as he did, under the arrangement with Robnett. I don't know as he spoke it that way at all.

(Testimony of Francis M. Long.)

Q. And what did he say besides what you have detailed here?

A. He just claimed it wasn't necessary; that we had done just as much as the majority of them had done towards seeing it.

Q. I show you, Mr. Long, the timber and stone lands sworn statement of Francis M. Long, dated March 26th, 1903, and ask you whether that is your signature to that paper, and if that is the paper you filed in the land office at Lewiston about the date it bears?

A. Well, I suppose it is. [1129—799]

Q. There isn't any doubt about it, is there?

A. No, I guess not.

Q. I show you nonmineral affidavit of the same date, signed Francis M. Long. Did you sign and file that paper?

A. I think so.

Q. I show you the testimony of Francis M. Long, given at the final proof, June 18th, 1903, and ask you if you signed that paper?

A. I signed a good many papers.

Q. Well, is that your signature to the paper I am showing you?

A. Yes, sir, I guess so.

Q. I show you the cross-examination of Francis M. Long at final proof, and ask you if you signed that paper?

A. I suppose I did.

Q. Who prepared that sworn statement for you that you have identified?

A. I'll be hanged if I remember.

Q. Well, after you had made your attempt to view this timber claim you came back to Lewiston, did you?

A. Yes, sir.

(Testimony of Francis M. Long.)

Q. And did you go to Mr. Robnett's office?

A. Well, yes, we went back there to the bank.

Q. Yes, and you saw Mr. Robnett; is that right?

A. Yes, I suppose so. I seen him afterwards.

Q. And didn't he give you a description of the property and tell you to go to Mr. Nickerson's office and tell you to have these papers prepared?

A. Well, I think the papers was prepared before by Mr. Nickerson.

Q. They were at Mr. Nickerson's office, waiting?

A. I think so.

Q. Did you make any arrangements for having them prepared, or were those arrangements made for you?

A. Well, me and the two boys had them all together up there. [1130—800]

Q. And you went to the land office and filed the sworn statement and made the nonmineral affidavit?

A. Yes, sír.

Q. Now, did you pay a fee at the land office when you made that filing, or did somebody else pay it for you? A. Well, I paid it.

Q. You paid it? A. I paid it, yes.

Q. Did Mr. Robnett give you the money at that time to pay it with?

A. Yes, the money was handed over to us.

Q. Who handed it over to you?

A. Mr. Robnett handed the money over.

Q. And then several months later you made your final proof, did you not?

(No answer.)

(Testimony of Francis M. Long.)

Q. That is the time you went to the land office and paid something about \$400.00 into the land office. Do you remember that? A. Yes, sir.

Q. And do you remember whether or not you saw Mr. Robnett just before you went to the land office to make that proof?

A. State that question again. I don't know just the way I understood it.

The Reporter thereupon repeated the last question.

A. Yes, sir, I think I did.

Q. Where did you see him?

A. I seen him right at the bank, or about the bank, somewhere there.

Q. And what did you go to the bank to see him for?

A. Well, I don't know, I don't remember whether I seen him at that time or not. I rather think I had the money then—borrowed the money then. I don't know that I seen him at all at that time.

Q. Didn't you get the money from Robnett the day that you paid [1131—801] it into the land office?

A. Yes, I guess I must have got it the day I paid it into the land office. Yes, that's right; I got the money that day.

Q. And you signed a note at the same time, did you? A. Yes, I signed a note for the money.

Q. And do you remember how much money Mr. Robnett gave you that day?

A. Well, I declare I don't know.

Q. Was it \$400.00?

A. Well, it was enough to cover the expenses; I

(Testimony of Francis M. Long.)

don't exactly know how much that was.

Q. The expenses for what?

A. For the Government.

Q. That was the money that you paid in the land office? A. Yes.

Q. And from the receipt they gave you at the land office on that occasion it appears that you paid an even \$400.00.

A. Well, it was probably that much that I got.

Q. And you say he gave you that the same day you made your proof, and you gave a note for it?

A. Yes, sir, I think that's correct.

Q. And did you go directly from the bank to the land office and pay that money in? A. I think so.

Q. Now, was there any discussion between you and Mr. Robnett as to what you should say when you went to the land office, relative to where you had received that money? A. I think not.

Q. Do you remember where you told them you got that money when you went to the land office?

A. I told them it was my own money, and which I considered it was my own money. [1132—802]

Q. Do you remember telling them how long you had had that money?

A. No, I don't remember that.

Q. Do you remember telling them where you got the money? A. No, sir, I don't.

Q. See if you remember this question being asked you on cross-examination, when you made your final proof: "Question 16. Did you pay out of your own individual funds all the expenses in connection with

(Testimony of Francis M. Long.)

making this filing, and do you expect to pay for the land with your own money?" "Answer. Yes. Yes."

Is that correct? A. Yes, sir, I guess that's right.

Q. You considered that that was your own money, as you had borrowed it?

A. Yes, sir, I considered it was my money, and I had borrowed it.

Q. "Question 17. Where did you get the money with which to pay for this land, and how long have you had the same in your actual possession?" "Answer. I sold stock. 7 or 8 years." Is that correct?

A. Yes, sir, I sold stock and had some money in the bank at the same time I got this money.

Q. Well, I am speaking about the money you paid into the land office. You had just gotten that from Mr. Robnett, had you not?

A. Well, I don't remember just exactly that question.

Q. No, but I am asking you about the fact now, Mr. Long.

A. I don't know whether—I don't remember ever saying that. I may have said it.

Q. But I mean the fact is, the money you paid into the land office you had gotten a few minutes before from Mr. Robnett, had you not?

A. Yes, sir.

Q. And that answer isn't exactly correct?

A. Which?

Q. That answer isn't exactly correct?

The SPECIAL EXAMINER.—What is your answer? He asks you—that is a question whether

(Testimony of Francis M. Long.)

that answer is correct or not? [1133—803]

WITNESS.—Yes, sir, I suppose it is correct.

Mr. GORDON.—Q. Do you remember signing a mortgage to Mr. Robnett for \$728.75 the same date that you made your final proof? A. Yes, sir.

Q. And that mortgage was to run for a year?

A. Yes, sir.

Q. Now, you have no recollection, have you, of paying anybody a location fee?

A. Well, they was to get a location fee—Benton and Robnett—out of it, I suppose, but it came through Robnett some way or another. He settled that when the mortgage was drawed up.

Q. In other words, if you paid it he gave you the money to pay it?

A. Why, sure he gave me the money to pay it.

Q. And that was included in the mortgage?

A. Yes, sir.

Q. But you have no recollection of whether you paid it personally, or whether Robnett or somebody else paid it?

A. No, sir, I don't remember anything about that.

Q. Now, don't you remember Mr. Robnett and you discussing the propriety of you testifying at the land office whether or not that was your money? Wasn't that discussed at that time?

A. At the land office?

Q. Just before you went to the land office?

A. Now, I don't believe I understand your question yet.

Q. You went to the land office and testified that

(Testimony of Francis M. Long.)

that was your own money that you was paying into the land office? A. Yes, sir.

Q. Now, do you remember whether or not just before you went there you and Mr. Robnett and your sons went over that question and discussed the matter as to whether or not you should testify that it was [1134—804] your own money?

A. I don't think so. I don't think there was anything said about that.

Q. You don't remember that?

A. I don't remember that.

Q. Have you ever gotten any money for that claim? A. Have I got any?

Q. Yes? A. I got a little.

Q. How much? A. \$25.00 over expenses.

Q. Who gave you that?

A. Well, we sold the claim to Kettenbach.

Q. Which Kettenbach—William F.?

A. Yes, William F. Kettenbach; he got the claim.

Q. And who gave you the \$25.00?

A. Kettenbach—William Kettenbach.

Q. And where did you make that settlement?

A. I made it there at the bank.

Q. With Mr. Kettenbach himself?

A. Yes, with Mr. Kettenbach himself, as well as I remember.

Q. In the first talk you had with Mr. Robnett about this claim, did he tell you what he could sell that claim for? A. No, sir, I think not.

Q. Didn't he tell you he could sell it for \$1,500.00 or \$1,600.00? A. No, sir, I think not.

(Testimony of Francis M. Long.)

Q. Are you sure?

A. Well, Benton spoke of it when we were up in the timber; he claimed it was worth \$1,500.00 or \$1,600.00, if I had a mind to sell it.

Q. I say, I am speaking about Robnett.

A. Well, I don't think Robnett said anything about it.

Q. You would not be sure of it, would you? [1135—805]

A. No, sir, I wouldn't be sure, but I don't think that he ever said anything about what he could sell the claim for, or anything of the kind.

Q. Very little of the transaction relative to the taking of this claim was done by you, was it?

A. Well, I didn't do very much about it. I was steady at work.

Q. Did you ever pay any interest on that note?

A. No, sir.

Q. Do you know what became of the note that you gave Mr. Robnett? A. No, I don't.

Q. I show you a deed dated August 9th, 1904, made by Francis M. Long and Annie E. Long to William F. Kettenbach, and ask you if you signed, executed and acknowledged that deed? A. Yes, sir.

Q. And your wife signed it, too? That is her signature? A. Yes, sir.

Q. And you never made any other deed of this property, did you? A. Which?

Q. You never made any other deed of this property, did you? A. No, sir.

Mr. GORDON.—It is stipulated by and between

(Testimony of Francis M. Long.)

the parties that Francis M. Long and Annie E. Long, his wife, made and executed a deed August 9th, 1904, conveying to William F. Kettenbach, in consideration of \$1.00, the north half of the southwest quarter and the north half of the southeast quarter of section 13, in township 39 north, of range 3 east, Boise meridian, containing 160 acres; that said deed was acknowledged August 9th, 1904, before D. Needham, a notary public of Nez Perce County, and that the same was filed for record at the office of the Recorder of Shoshone County, August 12th, 1904, at the request of William F. Kettenbach, and recorded in Book 26 of Deeds at page 305.

Mr. TANNAHILL.—The defendants severally waive any further identification of the document, but object to the evidence in so far as it [1136—806] relates to bills No. 406 and 407, upon the ground that it is immaterial, the entry of the witness not being involved in either of these actions.

Mr. GORDON.—We offer in evidence the timber and stone lands sworn statement of Francis M. Long, dated March 26th, 1903, the nonmineral affidavit of Francis M. Long, the notice for publication, the testimony of Francis M. Long given on final proof, the cross-examination of Francis M. Long at the final proof, all of which papers have been identified by the witness, the testimony of the witnesses at final proof, and the cross-examination of them, the Receiver's Receipt and the Register's Certificate, dated June 18th, 1903, and a certified copy of the patent issued to Francis M. Long, dated August 3d, 1904, all

(Testimony of Francis M. Long.)

relating to the entry of the north half of the southwest quarter and the north half of the southeast quarter of section 13, township 39 north, of range 3 east, Boise meridian. We also offer a certified copy of the Receiver's Receipt, dated June 18th, 1903, for the north half of the southwest quarter and the north half of the southeast quarter of section 13, township 39 north, of range 3 east, of Boise meridian, which was recorded in the office of the Recorder of Shoshone County at the request of W. F. Kettenbach June 22d, 1903. We also offer in evidence a certified copy of a mortgage, dated June 18th, 1903, made and executed by Francis M. Long and Annie E. Long, his wife, to Clarence W. Robnett, to secure a promissory note of even date in the sum of \$728.75, made by Francis M. Long and Annie E. Long, payable in one year to the order of Clarence W. Robnett, interest at one per cent. a month. The mortgage is acknowledged by Francis M. Long and wife Annie E. before John E. Nickerson June 18th, 1903, and recorded in the office of the Recorder of Shoshone County at the request of W. F. Kettenbach June 22d, 1903.

Mr. TANNAHILL.—The defendants severally waive any further identification of the documents, but severally object to the admission of any of the documents in evidence in so far as they relate to bills No. 406 and 407, upon the ground that the entry of the witness is not involved [1137—807] in either of these actions, and that they are irrelevant and immaterial. The defendants also severally object to

(Testimony of Francis M. Long.)

the admission of any of the final proof papers in evidence in support of either of the actions, upon the ground that they are matters relating to the final proof, and occurring long after the filing of the sworn statement, and irrelevant and immaterial. And the defendants severally move to strike out all of the evidence of the witness relative to the making of final proof and the conversations relating to the money with which he made the final proof, and any questions that he may have answered during his final proof, or upon making his final proof.

Said documents were thereupon marked by the Reporter as Exhibits 31, 31A, 31B, 31C, 31D, 31E, 31F, 31G, 31H, 31I, 31J, 31K, 31L, 31M, 31N, and 31-O.

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mr. Long, how long did you keep your land before you sold it to Mr. Kettenbach—how long after final proof?

A. Well, I couldn't say just exactly the time; it was quite a little spell.

Q. It was about a year, was it not?

A. Well, something near that, I suppose.

Q. Your note was to run a year? A. Which?

Q. Your note was to run a year?

A. Yes, sir. I think we sold it before it was due.

Q. And you made your final proof—

A. I don't know but what it was due before we sold it. I think likely it was a year before we sold it, or over.

(Testimony of Francis M. Long.)

Q. You made your final proof on June 8th, 1903, and you made your deed August 8th, 1904. Then, it was more than a year after you made final proof before you sold your land?

A. Yes, sir; I guess it was. [1138—808]

Q. Did you have any agreement with Mr. Kettenbach that you would sell him the land before you made the deed, or immediately prior to making the deed?

A. No, sir; we didn't have any agreement with Mr. Kettenbach whatever.

Q. Did you have any agreement with anyone that you would sell your land before you made your final proof? A. No, sir.

Q. You had no such agreement with Clarence W. Robnett? A. No, sir.

Q. Or with Benton, or Knight, or anyone else?

A. Nobody.

Q. Then, your affidavit that you made at the time you made or at the time you filed your sworn statement, "that I have made no other application under said acts; that I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit, and that I have not, directly or indirectly, made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself," now that affidavit was true, was it? A. Yes, sir.

(Testimony of Francis M. Long.)

Q. True at the time you made and filed your sworn statement? A. Yes, sir.

Q. And at the time you made your final proof?

A. Yes, sir.

Q. And it is still true?

A. Yes, sir, it is still true. [1139—809]

[Testimony of Benjamin F. Long, for Complainant.]

BENJAMIN F. LONG, a witness called in behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. What is your name?

A. Benjamin F. Long.

Q. Benjamin F. Long? A. Yes, sir.

Q. Are you a son of Francis M. Long, who has just testified? A. Yes, sir.

Q. And a brother of Mr. John H. Long, who was here yesterday? A. Yes, sir.

Q. How old are you, Mr. Long? A. I am 29.

Q. Do you remember taking up a claim under the timber and stone act in 1903, in March?

A. Yes, sir.

Q. Are you a married man? A. No, sir.

Q. What was your occupation in March, 1903?

A. Anything I could do.

Q. You have no trade nor profession, have you?

A. No, sir.

Q. And were you working at laborer's work at that time? A. Yes, sir.

(Testimony of Benjamin F. Long.)

Q. A farm-hand or mill-hand? A. Yes, sir.

Q. And what were your wages at that time?

A. Oh, all the way from \$3.00 down to \$2.50.

Q. What work did you do that paid you \$3.00 a day? A. Sawmill work.

Q. Doing what? [1140—810]

A. Sawmill work.

Q. And did you work regularly? A. Yes, sir.

Q. Or were you only employed periodically?

A. I worked every day the sawmill run.

Q. And did the sawmill run over six months in the year?

A. Well, now, I couldn't say how long it did run.

Q. With whom did you make arrangements to take up a timber claim?

A. Well, sir, I didn't make no arrangements at all myself; my brother done all that kind of work.

Q. Sir?

A. I say I didn't make any arrangements at all; my brother did all that kind of work.

Q. That is, your brother John H. Long?

A. Yes, sir.

Q. Now, what were the arrangements he made for you?

A. Do you mean arrangements to take up a timber claim?

Q. Yes?

A. Well, I don't know, he went down town.

Q. He went down where?

A. He went out with Knight; I don't know where he did go; he went down town. I was working at

(Testimony of Benjamin F. Long.)

the sawmill myself.

Q. And did he come to you and tell you to take up a timber claim? A. Yes, sir.

Q. And did he say anything about where the money was to come from to take up this timber claim?

A. Yes, sir.

Q. What did he say about that?

A. Well, he was to get the money from Robnett and Knight; they was to furnish the money.

Q. To get the money from Robnett and what? [1141—811]

A. Well, I don't know—to get it from Robnett or Knight, or get it from the bank down there.

Q. And did you know how much a timber claim would cost?

A. Well, I did then. I don't know—I don't remember just how much it did cost.

Q. How much?

A. I say, I don't know how much it did cost.

Q. And did you own any property at that time?

A. No, sir.

Q. Did you ever talk with Mr. Robnett about a timber claim yourself? A. No, sir.

Q. And you started out to look at this timber claim before you filed on it, did you? A. Yes, sir.

Q. With whom did you go?

A. I went with Mr.—

Q. Your father and your brother, whom you have named? A. Yes, sir.

Q. And Mr. Ellsworth Harrington?

A. Yes, sir.

(Testimony of Benjamin F. Long.)

Q. Well, was Mr. Knight and Mr. Benton along?

A. Yes, sir; both of them.

Q. And do you remember anybody else?

A. Well, that's all I remember of.

Q. And you left Lewiston together, did you?

A. Yes, sir.

Q. And where did you go?

A. We went up towards Kendrick.

Q. Up towards Kendrick? A. Yes, sir.

Q. And how far toward Kendrick? [1142—812]

A. Well, we went up as far as Dent.

Q. And how much farther?

A. That's as far as we went.

Q. Now, how far were you from the timber claim then? A. About 16 miles, I think.

Q. About 16 miles? A. Yes, sir.

Q. And have you ever been on that timber claim?

A. Not right on the claim. I have been all around it, but not to it.

Q. And why didn't you go to see the timber claim?

A. Well, he wouldn't take us; that was the reason.

Q. Now, who wouldn't take you?

A. Well, Benton.

Q. Benton? A. Yes, sir; he was the one.

Q. Was that William B. Benton?

A. I don't know what his name was. Benton is all I know.

Q. And what did he say was the reason he wouldn't take you to it?

A. Well, he said that it wasn't necessary; there wasn't any of the rest of them doing it.

(Testimony of Benjamin F. Long.)

Q. And so you took his word for it, and came back— A. — to Lewiston.

Q. Well, did Mr. Robnett, or Mr. Benton, or anyone else tell you that you would have to swear at the land office that you had been on this land?

A. No, sir.

Q. You did swear to that, though, didn't you?

A. Yes, sir.

Q. And you hadn't been on it, had you?

A. No, sir.

Q. And who paid your expenses in going up there to Dent and back? [1143—813]

A. We did; we paid our own.

Q. Who did? A. We did.

Q. Did you pay any of the expenses?

A. Yes, sir.

Q. How much did you pay?

A. Well, I don't know how much it cost.

Q. Did you pay anybody a fee for locating you?

A. Yes, sir.

Q. Who did you pay?

A. Well, we paid Robnett.

Q. You paid Robnett? A. Yes, sir.

Q. Now, did you pay him, or did he just take that out of the note that you gave him later?

A. We gave a note for it.

Q. That was after you had filed, though, some time? A. Yes, sir.

Q. Do you know how much the location fee was?

A. No, sir; I don't remember now.

Q. Well, why did you pay a location fee when they

(Testimony of Benjamin F. Long.)

didn't take you to the land?

A. Well, that's what I don't know.

Q. I show you timber and stone lands sworn statement dated March 26th, 1903, signed Benjamin F. Long, and ask you if you signed that paper and filed it in the land office at Lewiston? A. Yes, sir.

Q. I show you the nonmineral affidavit of the same date, signed Benjamin F. Long. Is that your signature to that paper? A. Yes, sir.

Q. I show you the testimony of Benjamin F. Long given at the final proof June 18th, 1903. Is that your signature? [1144—814] A. Yes, sir.

Q. I show you the testimony of Benjamin F. Long on cross-examination at final proof? Is that your signature? A. Yes, sir.

Q. Mr. Long, did you come to see Mr. Robnett at Lewiston before you filed this sworn statement which I have shown you? A. Yes, sir.

Q. And did he direct you where you should have that paper prepared? A. Yes, sir.

Q. What did he tell you?

A. He told me in the next room there in the bank.

Q. What's that?

A. He came in the next room there.

Q. Did you go to Mr. Nickerson's office—a lawyer?

A. Yes, sir.

Q. And he prepared that paper for you?

A. Yes, sir.

Q. And you filed it in the land office?

A. Yes, sir.

Q. Who paid the fee when it was filed?

(Testimony of Benjamin F. Long.)

A. We did.

Q. Who is "we"? A. Myself and my brother.

Q. Now, did you pay anything, or did your brother pay it all? A. Well, sir, I paid my share.

Q. Well, where did you get the money to pay it with? A. I worked for it.

Q. Where? A. I worked for it.

Q. Now, let me ask you: You gave Mr. Robnett a note for \$728.75; is that correct? [1145—815]

A. I don't know. I don't remember.

Q. Now, did Mr. Robnett advance all this money and then you gave him a note for as much as he advanced afterwards and a bonus?

A. I don't think we did.

Q. You don't know very much about this whole transaction, do you?

A. No, sir; I don't know very much about it. I was working at the time.

Q. How is that?

A. I don't know very much about it. I was working at the time.

Q. You took up this claim and did just what you were told to do; is that correct? A. Yes, sir.

Q. And signed any paper they told you to sign?

A. Yes, sir.

Q. Now, do you remember the time that you came to make final proof—the day you paid \$400.00 in the land office? A. What's that?

Q. Do you remember the day you came down to Lewiston to make final proof, and you paid \$400.00 in the land office? A. Yes, sir.

(Testimony of Benjamin F. Long.)

Q. Now, did you see Mr. Robnett that day?

A. Yes, sir.

Q. And how much money did you get from him?

A. Well, I don't remember. I don't remember.

Q. Did you get all the money that you paid in the land office from him? A. Yes, sir.

Q. And were you in Mr. Robnett's office at the bank just before you went to the land office and paid that money in?

A. I don't remember whether I was or not; I think we was, though.

Q. Well, the money you got from Mr. Robnett was the money you paid in the land office, was it not? [1146—816] A. Yes, sir.

Q. And they gave you a receipt for that money at the land office, didn't they? A. Yes, sir.

Q. And what did you do with that—give it to Mr. Robnett? A. I think we did.

Q. And was it after you made your proof that you signed the note and the mortgage? A. Yes, sir.

Q. What was your understanding that you were to do with this land when you first made arrangements to take it up?

A. We didn't have any understanding at all.

Q. You didn't have any understanding at all?

A. No, sir.

Q. And wasn't it the understanding that you were to sell it to Mr. Robnett? A. No, sir.

Q. Nothing at all was said? A. No, sir.

Q. Was anything said about what you were to do

(Testimony of Benjamin F. Long.)

with it? A. No, sir.

Q. Was anything said about how much it would cost you to take it up? A. Yes, sir.

Q. How much?

A. How much it would cost, you say?

Q. Yes. Did your brother tell you what the expenses would be, or what it would cost?

A. Yes, sir.

Q. How much was it?

A. I don't remember just now.

Q. You haven't any idea? [1147—817]

A. No, sir; not just now, I haven't.

Q. And did you have the money at that time to buy a timber claim?

A. Well, I didn't have it all; I had some.

Q. How much did you have?

A. Oh, I couldn't say how much I did have.

Q. How much?

A. I couldn't say how much I did have.

Q. \$25.00. \$30.00?

A. Oh, I had more than that.

Q. \$50.00?

A. Oh, up in the hundreds, somewhere.

Q. You had what? A. I had over \$100.00.

Q. Where did you keep it?

A. Well, in my pocketbook.

Q. Did you keep it in the bank at that time?

A. No, sir; I didn't have any account at the bank at that time.

Q. How is that?

(Testimony of Benjamin F. Long.)

A. I didn't have any account at the bank at that time.

Q. Did you have any bank account at that time?

A. No, sir; I don't think I had.

Q. Have you a bank account now? A. Yes, sir.

Q. Whereabouts?

A. In the First National Bank.

Q. Here?

A. Yes, sir. It was the Idaho Trust, but it ain't now.

Q. The Commercial National?

A. The Bank of Commerce.

Q. But I understood you to say you didn't have any bank account at the time that you took up this claim, or when you made your final [1148—818] proof, is that correct?

A. Well, I don't remember whether I had or not. I don't know.

Q. I asked you if you had any bank account or kept any money at the bank at that time?

A. Well, I did have some money, but I had loaned it out, and I don't remember whether I had any at that time or not. I don't remember now.

Q. Do you remember making a deed for this land?

A. Yes, sir.

Q. To whom did you make it? A. Kettenbach.

Q. William F. Kettenbach? A. Yes, sir.

Q. Who negotiated that sale for you?

A. Well, he wrote to us and wanted us to pay off the mortgage, and we didn't answer it, and so he—I think John he wrote to him then and asked him

(Testimony of Benjamin F. Long.)

what he would give him for it.

Q. Now, you gave a note to Robnett and he turned it over to Mr. Kettenbach; is that correct?

A. Yes, sir.

Q. And when the note came due Kettenbach wrote to you about it, and you told him that you couldn't pay the note, or your brother did, and wanted to know if he would take the land; is that correct?

A. Yes, sir.

Q. And how much did you get out of your land?

A. I don't remember how much it was.

Q. Was it \$50.00? A. Well, I couldn't say.

Q. Was it \$25.00?

A. Well, I couldn't say to that either; it wasn't very much, I know.

Q. You never paid any interest on that note, did you? [1149—819] A. No, sir.

Q. Nor taxes? A. No, sir.

Q. And you never had any of your own money, except your expenses to the timber and the first filing fee, in the deal, at all, did you?

A. That was all I had.

Q. And when you made the deed you got some small sum? A. Yes, sir.

Q. You don't know how much it was?

A. I don't remember how much it was.

Q. Have you any recollection at all how much you got? A. No, sir.

Q. Did you get any? A. Yes, sir.

Q. Now, was it \$10.00?

A. Oh, it was more than that.

(Testimony of Benjamin F. Long.)

Q. How much more?

A. Well, I couldn't tell you how much more; it was over \$25.00, though.

Q. \$27.50?

A. Oh, I don't remember what it was.

Q. Did you get the same amount—do you remember whether you got the same amount that your father and your brother got?

A. The same amount.

Q. Just exactly the same amount? A. Yes, sir.

Q. Who was that paid to, you or your brother.

A. It was paid to myself.

Q. It was paid to yourself? A. Yes, sir.

Q. Did you ever make more than the one deed to this timber claim? A. Yes, sir. [1150—820]

Q. To whom did you make the second deed?

A. I don't remember now who it was. I made an affidavit to sell it was all.

Q. Now, as I understand you to say, the money that you made final proof with in the land office you got from Mr. Robnett the morning that you made your proof; is that correct? A. Yes, sir.

Q. And you got it in the Lewiston National Bank?

A. Yes, sir.

Q. Was anything said at that time as to what you should say at the land office at proof as to where you got that money? A. No, sir.

Q. Didn't you discuss that?

A. We had—there may have been something, but I don't remember what it was now.

Q. Well, don't you remember that it was said that

(Testimony of Benjamin F. Long.)

you must say that that was your own money?

A. I don't know but what there was; I think there was.

Q. And that you had had it, and that you had worked for it? A. Yes, sir.

Q. That wasn't true, though, was it?

A. No, sir.

Q. Do you remember when you went to the land office with that money that Mr. Robnett had given you, and the question was asked you where you had gotten the money, and how long you had it in your actual possession, you said you had worked for it and had it for two years?

Mr. TANNAHILL.—We object to that as irrelevant and immaterial.

WITNESS.—I don't remember.

Mr. GORDON.—Q. That wasn't true, though, was it?

A. No, sir. [1151—821]

Q. In the first talk your brother had with you about that timber claim, did he tell you how much you could get out of it? A. Well, yes.

Q. How much did he say you could get out of it?

A. I think he said about \$1500.00.

Q. About \$1500.00? A. Yes, sir.

Q. Did he tell you who you could get that from?

A. No, sir.

Q. Did he tell you who told him he could get that much?

A. Well, he said Robnett thought he could sell it for that much.

(Testimony of Benjamin F. Long.)

Q. And that was the first talk your brother had with you about taking up a claim?

A. Yes, sir.

Q. And it was that conversation that induced you to go into this timber claim business?

A. Yes, sir.

Q. Is that correct? A. Yes, sir.

Q. And was it your understanding then from that first talk that Mr. Robnett was to sell that claim for you, and you were to get the difference between what the expenses was and about \$1500.00?

Mr. TANNAHILL.—We object to that as leading and suggestive and immaterial.

Mr. GORDON.—Answer the question.

A. No, sir.

Mr. GORDON.—Read the question and see if he understands it.

The Reporter thereupon repeated said question, as follows:

“Q. And was it your understanding then from that first talk that Mr. Robnett was to sell that claim for you, and you were to get the difference between what the expenses was and about \$1500.00?”

A. No, sir. [1152—822]

Q. Well, what did you expect to make out of it?

A. I expected to make all I could sell it for.

Q. Well, I understood, though, you said your brother said that Mr. Robnett said he thought he could sell it for \$1,500.00?

A. He said he thought we could get that out of it; he didn't say that he would sell it. He said he

(Testimony of Benjamin F. Long.)

thought we could get that much out of it.

Q. Did you think you were going to get \$1,500.00 over and above all your expenses?

A. I did when it first happened.

Q. Or did you think the claim would sell for \$1,500.00? A. Well, I didn't know.

Q. As the money was to be loaned you, and you were not to use any of your own money, you didn't pay very much attention to it, did you?

A. No, sir.

Q. You were not very much interested in it?

A. Well, I was interested in it in one way.

Q. In what way—to get as much as you could?

A. Yes, sir.

Q. Did it make much difference to you whether the timber on it was good or bad? A. Yes, sir.

Q. What difference did it make to you?

A. Well, the more timber it had on it the more I could get out of it.

Q. Were you told how much timber was on it?

A. Yes, sir.

Q. Who told you that—Benton?

A. Benton, I think.

Q. And you took his word for it? A. Yes, sir.

[1153—823]

Q. I show you a deed signed and executed by Benjamin F. Long, running from Benjamin F. Long to William F. Kettenbach, and dated July 25, 1904, and ask you if you signed that deed? A. Yes, sir.

Q. And delivered it to Mr. Kettenbach?

A. Yes, sir.

(Testimony of Benjamin F. Long.)

Mr. GORDON.—It is stipulated by and between the parties that Benjamin F. Long made and executed a deed dated July 25th, 1904, to William F. Kettenbach, in consideration of \$1.00, for the south half of the northwest quarter and the south half of the northeast quarter of section No. 13, in township No. 39 north, of range 3 east, of Boise meridian, and acknowledged the same July 25th, 1904, before D. Needham, a notary public of Nez Perce County, and that said deed was filed for record July 27th, 1904, in the office of the Recorder of Shoshone County, at the request of William F. Kettenbach, and recorded in Book 26 of Deeds, at page 281.

Mr. TANNAHILL.—The defendants severally object to the evidence offered, in so far as it relates to Bills No. 406 and 407, upon the ground that the entry of the witness is not involved in these two particular actions.

Mr. GORDON.—We offer in evidence the timber and stone lands sworn statement of Benjamin F. Long, dated March 26th, 1903, the notice of publication, the nonmineral affidavit of Benjamin F. Long, the testimony of Benjamin F. Long given on final proof, and the cross-examination of Benjamin F. Long given on final proof, all of which papers have been identified by the witness, the testimony of the witnesses on final proof, and the cross-examination of them, the Receiver's Receipt and the Register's Certificate, dated June 18th, 1903, and a certified copy of the patent issued to Benjamin F. Long, dated August 3d, 1904, all relating to the entry of

(Testimony of Benjamin F. Long.)

the south half of the northwest quarter and the south half of the northeast quarter of section 13, in township 39 north, of range 3 east, Boise meridian. We also offer a certified [1154—824] copy of a mortgage made and executed by Benjamin F. Long June 18th, 1903, conveying to Clarence W. Robnett the south half of the northwest quarter and the south half of the northeast quarter of section 13, township 39 north, of range 3 east, Boise meridian, to secure a promissory note signed by Benjamin F. Long, dated June 18th, 1903, in the sum of \$728.75 payable to the order of Clarence W. Robnett in one year, with interest at the rate of one per cent per month. Said mortgage was acknowledged by Benjamin F. Long before John E. Nickerson, a notary public of Shoshone County, June 18th, 1903, and was recorded in the office of the Recorder of Shoshone County at the request of William F. Kettenbach, June 22d, 1903. We also offer a certified copy of the Receiver's Receipt issued to Benjamin F. Long, dated June 18th, 1903, in payment of the south half of the northwest quarter and the south half of the northeast quarter of section 13, township 39 north, range 3 east, Boise meridian, recorded at the request of W. F. Kettenbach, June 22d, 1903, in the office of the Recorder of Shoshone County, Idaho.

Mr. TANNAHILL.—The defendants severally waive any further identification of the documents, but object to all of the documents offered in so far as they relate to bills No. 406 and 407, upon the ground that they are irrelevant and immaterial, the

(Testimony of Benjamin F. Long.)

entry of the witness not being involved in these two particular actions. And the defendants severally object to the final proof papers being admitted in evidence in support of either of the actions, upon the ground that they are irrelevant and immaterial, and matters relating to the final proof, and occurring long after the filing of the sworn statement.

Said documents were thereupon marked by the Reporter as Exhibits 32, 32A, 32B, 32C, 32D, 32E, 32F, 32G, 32H, 32I, 32J, 32K, 32L, 32M, 32N, and 32O.

Mr. GORDON.—Q. Mr. Long, you remember the conversation you have detailed with your brother, when he told you that you could get \$1,500.00 out of it, or something to that effect? You remember telling me that, do you? [1155—825]

A. Yes, sir.

Q. Well, who was present at that conversation besides yourself and your brother? Do you remember whether your father was present?

A. I don't remember.

Q. You don't remember? A. No, sir.

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mr. Long, how long after you made your final proof was it before you had any negotiations with W. F. Kettenbach relative to the sale of the land to him? A. I don't remember.

Q. It was about something over a year, was it not? (No answer.)

(Testimony of Benjamin F. Long.)

Q. You made your final proof—

A. I don't remember.

Q. The final proof papers show that you made your final proof June 18th, 1903, and the deed shows that you conveyed it to William F. Kettenbach, July 25th, 1904; then it would be something over a year before you had any talk with Mr. Kettenbach regarding the sale of the land; that is, something over a year after you made final proof?

A. Yes, sir.

Q. And as I understand you, you had no agreement or understanding with anyone to convey your land to them before you made your final proof?

A. No, sir.

Q. Neither to Clarence Robnett, or William B. Benton, William F. Kettenbach, George H. Kester, William Dwyer, or anyone else? A. No, sir.

Q. Then the affidavit you made when you filed your sworn statement, "that I have made no other application under said acts; that I do not apply to purchase the land above described on speculation, but in [1156—826] good faith to apply it to my own exclusive use and benefit, and that I have not, directly or indirectly, made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself," that affidavit was true at the time you made it, was it? A. Yes, sir.

Q. And it was true at the time you made your

(Testimony of Benjamin F. Long.)

final proof? A. Yes, sir.

Q. And it is true at the present time?

A. Yes, sir.

Q. Now, in this conversation with your brother relative to \$1,500.00, did your brother tell you that the claim ought to be worth \$1,500.00?

A. No, sir.

Q. What did he tell you?

A. Well, he said that they thought it would be worth that much.

Q. Thought it would be worth \$1,500.00?

A. Yes, sir.

Q. That is the conversation, as you remember it?

A. Yes, sir.

Q. There was no understanding that you should sell it for \$1,500.00? A. No, sir.

Q. And you didn't understand that you was to sell it for \$1,500.00 or any other sum?

A. No, sir.

Q. You intended to pay the claim out, pay what money you had borrowed, and keep your claim until you got a good opportunity to sell it?

A. Yes, sir.

Q. As I understand you, you made an agreement or signed a contract to sell it to someone else before you sold to Kettenbach? [1157—827]

A. Yes, sir.

Q. Who was it you signed that contract to?

A. I don't remember.

Q. You gave an option on it, did you not?

A. Yes, sir.

(Testimony of Benjamin F. Long.)

Q. Was it the same party your brother gave his option to? A. Yes, sir.

Q. And that option was never taken up?

A. No, sir.

A recess was thereupon taken until two o'clock P. M. [1158—828]

At two o'clock the taking of testimony was resumed.

[Testimony of George Ray Robinson, for Complainant.]

GEORGE RAY ROBINSON, a witness called on behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. What is your name?

A. George Ray Robinson.

Q. Where do you reside, Mr. Robinson?

A. Lewiston. Well, I have been at Winchester this summer, but I live here.

Q. You resided at Lewiston in March, 1903?

A. Yes, sir.

Q. Do you remember of taking up a timber claim about that time? A. Yes, sir.

Q. I show you timber and stone land sworn statement of George Ray Robinson, dated March 31, 1903, and ask you whether you signed and filed that paper in the land office about the date it bears?

A. I did.

Q. I show you the testimony of George Ray Rob-

(Testimony of George Ray Robinson.)

inson given on final proof, and ask you if you signed that paper June 26, 1903? A. Yes, sir.

Q. I show you the cross-examination of George Ray Robinson, taken at the same time, and ask you if that is your signature to that paper?

A. Yes, sir.

Q. Mr. Robinson, what was your occupation at that time? A. Electrician.

Q. Where were you employed?

A. Lewiston Light Company.

Q. Was Mr. Guy Wilson employed there at the same time? A. He was.

Q. And Mr. Bertsel H. Ferris? [1159—829]

A. He was.

Q. What was your salary at that time?

A. Why, either two or two and a quarter a day.

Q. Were you married? A. No, sir.

Q. What was your age at that time?

A. How long ago has that been?

Q. 1903. A. It has been six years, hasn't it?

Q. Six or seven. How old are you now?

A. I am thirty-five, or I will be thirty-five the next to the last day of January.

Q. Did you own any property at that time?

A. No, sir.

Q. Did you have any money in the bank?

A. No.

Q. Who first spoke with you about taking up a timber claim?

Mr. TANNAHILL.—The defendants severally object to any evidence of the witness relative to his

(Testimony of George Ray Robinson.)

taking up a timber claim, in so far as it relates to bills No. 406 and 407, upon the ground that the entry of the witness is not involved in these two particular actions, and it is immaterial.

Mr. GORDON.—Answer the question.

WITNESS.—I didn't get the question.

Q. Who first spoke with you about taking up a timber claim? A. Why, Bert. Ferris.

Q. Well, state what he said to you.

A. Why, he said that Mr. Robnett had some claims in view that we could get.

Q. And did you go to see Mr. Robnett?

A. I did.

Q. What was your conversation with Mr. Robnett? [1160—830]

A. Why, he told us that claims were very scarce, but he had a couple that could be located on if we was fast about it and located before somebody else got to them.

Q. Did you have any money with which to take up a timber claim? A. No, sir.

Q. Was any arrangement made that he was to advance you the money? A. Yes, sir.

Q. What was he to do,—to advance all expenses?

A. Well, he would advance the money with which to prove up with.

Q. Were you to pay the other expenses?

A. Yes, sir.

Q. How about the locator's fee? Was anything said about that?

A. Well, the claims were to be sold, that is, he said

(Testimony of George Ray Robinson.)

he thought he had a buyer in view, and when the claims were to be sold, why the locator was to have \$100.00 and the man that estimated the claim was to have \$125.00.

Q. What were you to get?

A. I was to get the remainder of what the claim was sold for.

Q. Was any price set, or what it would be sold for?

A. Well, no, not what it would be sold for, but he said he could almost guarantee us \$500.00 clear; he said he thought it would surely sell so that we could get \$500.00 above the selling price of the claim,—above the other expenses.

Q. That was before you located on the land that this arrangement was made, was it?

A. Yes, sir.

Q. Now, you said he told you to file before someone else might take them up. Is that correct?

A. Yes, sir.

Q. Was anything said about whether you should go to view the land?

A. He told us that we had better file right away, because there was parties up in there looking at claims, and if we waited until we [1161—831] could go to see them they would very likely be taken.

Q. Mr. Robnett was the one that told you this?

A. Yes, sir.

Q. Where was this conversation?

A. At the house.

Q. Was any arrangement made that you were to

(Testimony of George Ray Robinson.)

see him later about it?

A. Why, we was to go to the bank next morning and get the,—I don't know what it was,—some paper to take up to Nickerson.

Q. The description of the land?

A. The description, I suppose.

Q. Did you go to the bank? A. Yes, sir.

Q. Who went with you? A. Bert. Ferris.

Q. What part of the bank did you see Mr. Robnett in?

A. In the directors' room; I suppose it was that room.

Q. And he gave you some paper to take over to Mr. Nickerson? A. Yes, sir.

Q. Do you remember whether or not the paper that you,—I will ask you, do you remember what the paper was that he gave you to take to Mr. Nickerson?

A. No, I really don't remember exactly.

Q. Do you remember what it looked like?

A. It looked something like that.

Q. Do you remember whether Mr. Nickerson prepared that sworn statement for you?

A. I don't know. I might tell by looking at it; I am not sure.

Q. Well, you are looking at it now, aren't you? That is the first paper you filed in the land office.

A. I suppose that is the one.

Q. What did you get at Mr. Nickerson's office if it wasn't that paper? [1162—832]

A. I suppose it was that paper.

Q. Did you have to pay Mr. Nickerson any fee for

(Testimony of George Ray Robinson.)

his services? A. I really don't remember now.

Q. Do you know whether you did or not, or don't you remember?

A. I don't remember, but it seems to me something like \$1.00, but I am not positive about it.

Q. Do you think you paid it, or did Mr. Robnett pay it?

A. I know if there was any charges, I paid it.

Q. Then you took it to the land office and filed it?

A. Yes, sir.

Q. Did you pay any fee there? A. I did.

Q. Was it your own money, or was that advanced to you? A. It was my own.

Q. When you filed on this land, and prior to the time you filed on this land, after your first talk with Mr. Robnett, what was your understanding you were to do with this land?

A. Well, the understanding was that he had a buyer in view and he was to sell the land for us.

Q. Now, what was your understanding? Was it your understanding that you were to sell it to whom Mr. Robnett told you?

A. Well, not exactly that; he was to sell the land in case he could, but in case he couldn't or didn't sell it, we had the privilege of selling it to someone else.

Q. I understand that, but until you found out that he couldn't sell it, your understanding was that you were to let him have the sale of it, is that correct?

Mr. TANNAHILL.—We object to that as leading and suggestive.

A. Well, I don't think that, I don't know exactly

(Testimony of George Ray Robinson.)

how that could be, but I know I didn't try nor didn't have any intention of trying to sell it, but I depended on him to make the change for me. [1163—833]

Q. That is what I am trying to get at, Mr. Robnett, if your understanding with Mr. Robnett before you took up this claim was that he was to control the sale of it.

Mr. TANNAHILL.—We object to that as leading and suggestive.

A. Yes, he was to sell it, but I believe that in case I found a buyer that would give more I would have sold it.

Mr. GORDON.—Q. When did you get that notion into your head?

A. Well, I don't know; I don't believe there was anything in the contract that would have kept me from that, but at the same time I didn't have any intention of doing it.

Q. When did he tell you that he would sell that land?

A. About the 1st of September, I believe.

Q. Wasn't it the 1st of July?

A. No, I think it was about the first of September, maybe it was July.

Q. Wasn't it that he told you he had a company or some parties that he was assembling a number of timber claims for, and that he would turn yours in to that, about a certain date, which you fix as the first of September, is that correct?

A. Yes, something like that, either he had the people that were going to buy claims and he thought he

(Testimony of George Ray Robinson.)

would make the change, sell it to them.

Q. You say you didn't have any money at that time to take up a claim? A. No.

Q. And if it hadn't been for this arrangement with Mr. Robnett would you have taken up a claim?

A. No, sir.

Q. He gave you the description of the land that he wanted you to locate on, did he not?

A. Yes, sir. [1164—834]

Q. You had never been up into this timber country, had you? A. No, sir.

Q. And you did not know whether the claim you were filing on had any timber on it or not, did you?

A. No, sir, I did not.

Q. You filed the papers in the land office that you have identified here as your sworn statement, and do you remember whether or not, in swearing to that paper, you swore that you had been upon the land?

A. I swore that I had.

Q. With whom did you discuss the propriety of swearing to that,—anyone?

A. I don't exactly understand that word.

Q. Did you discuss with anyone before you went to the land office to swear to that statement whether or not it was right that you should swear to it?

A. Yes, I did.

Q. With whom? A. Robnett.

Q. Did he soothe your conscience to the extent that you could make that statement?

A. Well, he said no one would be the loser, the Government would get their money, and I could go

(Testimony of George Ray Robinson.)

and see the land afterwards, and there would be no practical difference.

Q. Well, you did go to see the land later, did you?

A. Well, we started up there, but we never got there.

Q. With whom did you start? A. Bill Benton.

Q. How far did you get?

A. I think they called it a mile or two above Big Island.

Q. Was it beyond Dent?

A. Oh, yes, beyond Dent.

Q. What was the nearest to the timber that you got? [1165—835] A. We were in the timber.

Q. I know, but I mean this timber claim.

A. You mean how near I got to it?

Q. Yes.

A. Well, I must confess that I don't know.

Q. Were you within ten miles of it?

A. Well, Benton said it was just a few miles, but I don't know.

Q. Who was with you on that trip, besides Benton?

A. Ferris, Sage Achin, and N. J. Allen and Bert Phillips.

Q. Did you say Bert. Ferris too?

A. Yes, Bert. Ferris,—I mentioned him first.

Q. That is Bertsel H. Ferris, is it? A. Yes.

Q. Who else?

A. A fellow by the name of Chapman, I believe it was.

Q. Which Chapman was that?

A. I don't know what his name was,—just Chap-

(Testimony of George Ray Robinson.)

man. I had forgotten all about him until just lately. He was with the bunch. I think there was nine of us.

Q. Did any of them get any nearer to the timber than you did?

A. Well, yes, perhaps; in the afternoon before we started back, why, Ferris and Sage Achin, I believe Sage, two or three of them anyhow, took a boat and went up the river a little ways. They started out and I supposed they were going up to see the land. In fact, I didn't know they was going until after they had gone, and they came back and—

Q. Why didn't you go all the way after you had gotten that far?

A. Well, sir, I must confess I don't really know; Benton didn't seem to want to take us.

Q. Did he say anything about it?

A. Well, I don't know.

Q. Don't you remember whether he said something about it? [1166—836]

A. Well, I know the talk about coming back,—he said the boys all seemed to want to come back, and so he said he thought it was all right and we would come back.

Q. Did he tell you it wasn't necessary to see the land?

A. Well, I don't know whether he did or not.

Q. You didn't care much about the land anyhow, did you?

A. No, but I really did want to go on the claim.

Q. What did you want to go on the claim for?

A. Well, partly for curiosity.

(Testimony of George Ray Robinson.)

Q. What was the other part? That you wanted to swear to the truth when you went to the land office?

A. Yes, I would rather swear to the truth; still I didn't realize the weight of it like I have since. If I had I would have either gone on or I wouldn't have took it up.

Q. Then, you came back to Lewiston, did you?

A. Yes, sir.

Q. How long was that before you made your proof?

A. I don't remember for sure, but I think that was in June some time, and I think we proved up in July; I am not sure.

Q. Just a short time before?

A. Yes, not so very long.

Q. Did you see Mr. Robnett again in this transaction, before you made proof?

A. Well, I guess we did before we proved up, of course. I don't know how soon, but we saw him I guess the same day we got the money.

Q. Was that the day you made proof? A. Yes.

Q. Where did you see him on that occasion?

A. I think in the directors' room, that north room at the bank.

Q. The Lewiston National Bank? A. Yes.

Q. What did you get that day,—any money?
[1167—837] A. Yes, sir.

Q. How much money did you get?

A. I think it was \$400.00.

Q. What did you do with that \$400.00?

(Testimony of George Ray Robinson.)

A. Went up to the land office and gave it to Mr. West.

Q. And made your proof with it?

A. Made the proof.

Q. The same \$400.00 that Robnett gave you?

A. Yes, sir.

Q. Did they give you a receipt for it at the land office? Did the receiver give you a receipt?

A. I presume he did.

Q. What did you do with that?

A. I don't know.

Q. Do you remember whether you took it back to Mr. Robnett? A. No, I don't remember now.

Q. After you went to the land office did you make a note, give a note for the money you had gotten?

A. Yes, sir.

Q. How long afterwards?

A. I believe we gave the note the same day, but I am not sure.

Q. Do you remember how much the note was for?

A. I remember how much I thought it was for.

Q. Well, was it for more than you thought it was for? A. Yes, sir, it certainly was.

Q. How much was the note for, do you remember?

A. Why, I supposed at the time that it would be for the \$400.00 that I borrowed for the claim to prove up, and \$125.00 for estimator, and \$100.00 for the locator, I supposed that was what it would be; if the note was to be any more I can't remember about it.

Q. Wasn't it that you were to give the locator \$100.00 and the estimator, \$25.00? [1168—838]

(Testimony of George Ray Robinson.)

A. No, sir.

Q. Well, I don't want to correct your testimony.

A. You mean \$125.00?

Q. Altogether.

A. A hundred and twenty-five altogether?

Q. Yes, for the locator and the estimator?

A. No; one or the other of them was to get \$125.00, but I don't remember for sure which, because I didn't care just so I got the claim and got to sell it and got the money on it. If I had to give up that I wasn't particularly interested which one got it, but one or the other was to get \$100.00 and the other \$125.00, then I was to get the balance.

Q. Your only interest in it was to get the money that it would sell for, and it was immaterial to you how much it cost, is that correct?

A. Well, I wanted it to cost as little as possible, so that when it was sold I would get as much as possible, but if I had to give up that to get it I didn't care which got that.

Q. Did Benton do you any good on that claim?

A. No, he certainly didn't.

Q. Mr. Robnett gave you the description of it and tended to that part of it for you, did he?

A. Yes, sir.

Q. And Mr. Benton took you out on a little excursion? A. Yes, sir.

Q. And endeavored to soothe your conscience?

A. Well, I don't want to charge him with anything, but we didn't see the claim anyhow.

Q. Do you remember, when you were in the bank

(Testimony of George Ray Robinson.)

with Mr. Robnett just before you made your proof, of any questions being shown you? A. Yes, sir.

Q. Were they a set of the questions and cross-examination that you were to be put through at the—

A. At the land office. [1169—839]

Q. Land office? A. Yes, sir.

Q. Well, were you instructed as to how to answer those questions?

A. Why, he showed us a paper that had been filled out and we looked over the questions.

Q. The papers that had been filled out, were they the ones you used or did he have a set of others?

A. No, a set of someone else's.

Q. And you studied up the answers so that you could make them like that?

A. Well, not exactly, we didn't exactly study them. He went over several of them, a good many of them, and we thought the answers was good enough for us.

Q. Was anything said at that time as to where you should swear you got the money you were making proof with?

A. Yes. I don't know exactly what was said, but I do remember that there happened to be on that other paper something in regard to that; I don't remember what was on the paper, but I read it, and I would say that I borrowed the money on my own personal note, which I did.

Q. Were they endeavoring to get you to say it was your own money?

A. I don't really know that he endeavored to.

Q. Did he suggest it?

(Testimony of George Ray Robinson.)

Mr. TANNAHILL.—I object to that as leading and suggestive.

A. I don't know that he suggested it or not. I really thought he expected me to say that; I don't know.

Q. The reason I say that, you told the truth about it, you told him you borrowed the money on your own note?

Mr. TANNAHILL.—We object to that as leading and suggestive.

WITNESS.—I wish when you talk you would talk plain enough so that I can hear what you say.

The SPECIAL EXAMINER.—Whom were you speaking to? [1170—840]

WITNESS.—Mr. Tannahill. When he talks when I am talking it rather interferes with me.

The SPECIAL EXAMINER.—Well, he was making an objection. When he starts to make an objection you wait till he gets through before you answer.

Mr. GORDON.—He was just talking for the record.

Q. Now, who was with you in the directors' room of the bank with Mr. Robnett the day you went there the day you made proof?

A. Mr. Ferris, Bert. Ferris.

Q. He was present at all this conversation?

A. Yes, sir.

Q. Now I will ask you whether or not you felt free to sell this land to anybody but Mr. Robnett prior to the date that he had told you in your first conversation with him that he could dispose of it?

(Testimony of George Ray Robinson.)

A. Well, I don't know as I had any feeling on the subject; I didn't try to, I didn't have any intention of trying to. I left it all in his hands.

Q. I will ask you whether or not it was a fact that you left the whole transaction in his hands?

A. Yes, sir, I did. I didn't do it in a business like way at all. If I had, I would never have got into it.

Q. You did just exactly what he told you to do during the whole transaction? A. Yes, sir.

Q. Do you remember to whom you made the note that you gave Mr. Robnett?

A. To the Lewiston National Bank.

Q. You are sure of that? Wasn't it payable at the Lewiston National Bank?

A. It might have been; the Lewiston National Bank held the note.

Q. Do you know what became of it?

A. When I sold the claim, I think that I got the note back; at the [1171—841] time of the Moscow trial, at that time I couldn't remember at that time. I didn't have any reflection at all, but since that time I can reflect, and I think I got the note and tore it up, although I am not positive; they may have the note yet so far as me being positive am concerned.

Q. You gave that note, however, to Mr. Robnett?

A. Well, I guess so.

Q. I mean you presented it to him after you signed it? A. Yes.

Q. And you haven't any recollection of the person to whose order the note was made?

(Testimony of George Ray Robinson.)

A. Well, not in particular, no.

Q. You didn't care anything about that, did you?

A. No, sir.

Mr. GORDON.—Have you got the deed there.
Mr. Tannahill?

Mr. TANNAHILL.—Yes. (Handing deed to
Mr. Gordon.)

Mr. GORDON.—I asked you if you executed a mortgage the same day you made the note to Mr. Robnett? A. No, it was several days afterwards.

Q. Several days afterwards you made the mortgage? A. Yes.

Q. And did you make the note the same day you made the mortgage?

A. No, the note was given the same day I proved up on the claim, I think.

Q. And from the date of the mortgage you made the mortgage the same day.

A. The mortgage was dated,—I don't know when it was made, but I know when I signed it or got it or saw it, at least, it was several days afterwards, but it was dated back the same date as the note.

Q. But it was some time afterwards that you executed the mortgage? A. Yes.

Q. How long after you made your proof did you sell this claim? [1172—842]

A. Well, I don't remember now,—a couple of years afterwards.

Q. Who negotiated the sale of it for you? Who had the selling of it for you?

A. Well, sir, I don't remember now whether Mr.

(Testimony of George Ray Robinson.)

Robnett told me to go to see Kettenbach or not; I suppose he did though, because I know I went to see Will Kettenbach. Maybe he saw Will himself; I am not sure.

Q. How much did you get out of the claim?

A. Well, the claim sold for \$1,000.00, but I only realized \$71.25.

Q. Was that all that was given to you?

A. That was all I got.

Q. The rest went to make up interest on the note, and so forth?

A. It went to make up interest on the note, but the note was \$200.00 more than I supposed it was.

Q. Didn't you even read the note when you gave it?

A. Well, I suppose I did, but I declare I don't know; I should have, at least.

Q. I show you deed, dated October 16, 1905, signed George Ray Robinson, running to William F. Kettenbach, and ask you if that is the deed you signed and acknowledged?

A. That is my signature all right.

Q. And you acknowledged that before Mr. Thomas Mullen, do you remember appearing before him?

A. Yes, I remember being before him once at least.

Mr. GORDON.—It is stipulated by and between the parties hereto that the witness George Ray Robinson made and executed a deed bearing date October 16, 1905, conveying to William F. Kettenbach, for a consideration of \$1.00, the north half of the northwest quarter and the north half of the northeast quarter of section 26, township 39 north of range 3

(Testimony of George Ray Robinson.)

east, Boise meridian; that said deed was executed by George Ray Robinson, and executed and acknowledged before Thomas Mullen, a Notary Public of Nez Perce County, Idaho, October 16, 1905, and that said [1173—843] deed was recorded at the request of the Lewiston National Bank January 6, 1906, in Book 85 of Deeds, page 201.

Q. That was the only deed you ever made for this property, was it? A. Yes, sir.

Mr. GORDON.—We offer in evidence the timber and stone land sworn statement of George Ray Robinson, dated March 31, 1903, the testimony of George Ray Robinson, given at final proof, the cross-examination of George Ray Robinson given at the same time, the receiver's receipt and the register's certificate, dated June 26, 1903, certified copy of the patent issued to George Ray Robinson, dated August 3, 1904, all relating to the entry of the north half of the northwest quarter and the north half of the northeast quarter of section 26, in township 39 north of range 3 east, Boise meridian. We also offer a certified copy of the receiver's receipt just referred to, recorded at the request of W. F. Kettenbach July 1, 1903. We also offer in evidence a certified copy of a mortgage made by George Ray Robinson June 26, 1903, conveying to Clarence W. Robnett the north half of the northwest quarter and the north half of the northeast quarter of section 26, in township 39 north of range 3 east Boise meridian, to secure a note signed by George Ray Robinson, dated June 26, 1903, in the sum of \$728.75, payable in one year after its

(Testimony of George Ray Robinson.)

date, to the order of Clarence W. Robnett, said mortgage being signed by George Ray Robinson, and acknowledged June 27, 1903, before John B. Anderson, a notary public for Nez Perce County, Idaho, and recorded at the request of W. F. Kettenbach July 1, 1903, in the office of the recorder of Shoshone County, Idaho.

Said above mentioned documents were thereupon marked by the stenographer as Exhibits 33, 33A, 33B, 33C, 33D, 33E, 33F, 33G, 33H.

Mr. TANNAHILL.—The defendants severally waive any further identification of the papers, but severally object to the admission of any of the documents in evidence, and also the admission of the evidence of the deed, in so far as the same relates to bills No. 406 and 407, upon the ground that the entry of the witness is not involved in these two [1174—844] particular actions, and it is irrelevant and immaterial. And the defendants severally object to the admission of the final proof papers in evidence in support of either of the bills or either of the causes, upon the ground that they relate to matters occurring long after the filing of the sworn statement, and are irrelevant and immaterial.

Mr. GORDON.—Q. See if this refreshes your recollection, Mr. Robinson. I read from the testimony reported to be given by you in the trial of William F. Kettenbach and others, at Moscow, in the spring of 1907, No. 1605, of the Circuit Court of Appeals record, on which a stipulation has heretofore been made, reading from page 1012, and I shall ask you

(Testimony of George Ray Robinson.)

if you remember the question which I shall read to you being asked you at that time, and whether you made the answer which I shall also read. From the context it would appear that this was a conversation with Mr. Robnett just prior to the time you made your entry. (Reading:) "Mr. Ruick: Now, give the conversation just as fully and as completely as you can recall it, Mr. Robinson." "Answer. Well, after going to Robnett's we spoke to him about taking a claim and to see what could be done about getting the money, and he told us he could furnish us the money to take a claim, and told us to call around at the bank and he would give us the numbers." "Question. Of the land?" "Answer. Of the land." "Question. What bank?" "Answer. The Lewiston National Bank." "Question. Well, state the conversation fully, Mr. Robinson, what was said between you?" "Answer. Well, we talked about how much timber there was on the land and what it ought to sell for, and he said he thought early in July he would have a buyer and we could turn it by that time, and that way we was to give a note for the money, and all over and above the note after the claim was sold we were to get that over and above the note." [1175—845] "Question. What were you to do with the claim after you got title to it, what privilege was he to have, if any?" "Answer. Well, he said he had a buyer he thought that would take it early in July, but if he didn't, why, we had a right to sell it ourselves." Do you remember those questions being asked you and those answers being made

(Testimony of George Ray Robinson.)

by you? A. Something similar to that; yes.

Q. Does that refresh your recollection as to whether he told you he could sell it in July or September?

A. Well, it must have been July, because I would be more likely to remember it then than now; I had forgotten that.

Q. Do you know Mr. Emory? A. Yes, sir.

Q. How long have you known him?

A. Oh, I have known him by sight for five or six years.

Q. Is he the gentleman who was connected with Mr. Colby in business, the firm of Emory & Colby?

A. I don't know whether they were—

Q. Was the gentleman you mean connected in business with Mr. Small, the miller, running a sawmill?

A. Why, Small & Emory run a sawmill, and that is the Emory I refer to.

Q. Do you remember whether or not at one time Mr. Emory wanted you to give him an option on your land? A. Yes, sir.

Q. What did you do? A. I gave him the option.

Q. Did you have to see somebody before you gave him the option?

A. Why, I think Mr. Robnett told me he wanted an option, but I am not certain.

Q. Do you remember whether or not you went to see Mr. Robnett and asked him if you could give him an option?

A. I believe I did, now I think about it. [1176—846]

(Testimony of George Ray Robinson.)

Q. I am reading from page 1051 of the same record, and I will ask you whether or not this question was asked you at the trial to which I have referred, and whether you made the answer which I shall also read: "Question. How did it come about that you gave Mr. Emory an option on this timber?"

"Answer. Why, I think Mr. Emory asked me for an option, and I told him I would speak to Mr. Robnett first, and if it was all right with him I would give it to him. I told him I had given Mr. Robnett an option and I didn't know how long and if it had run out, and if Robnett had no objection I would give him the option." "Question. The option was solicited by Mr. Emory?"

"Answer. Yes, sir." Do you remember those questions and answers?

A. I don't remember about the questions, but I think that is about the facts.

Q. They are the facts?

A. I think they are the facts.

Mr. GORDON.—Mr. Tannahill, I don't know where that note is. Can we read it from the record here?

Mr. TANNAHILL.—Yes.

Mr. GORDON.—It is stipulated by and between the parties that the note referred to by the witness is as follows:

"728.75 Lewiston, Idaho, June 21, 1903.

One year after date, without grace, for value received, I promise to pay to the order of Clarence W. Robnett at the Lewiston National Bank, Lewiston, Idaho, the sum of Seven Hundred and Twenty-eight

(Testimony of George Ray Robinson.)

and 75/100 Dollars, in United States Gold Coin, with interest after date in like Gold Coin at the rate of one per cent. per month until paid, and if suit be instituted to collect this note or any part thereof, I promise to pay the additional sum of Seventy-five Dollars as attorney's fees in said suit.

GEORGE RAY ROBINSON.

P. O. Lewiston, Idaho.

(Endorsed on the back:) [1177—847]

Pay to W. F. Kettenbach without recourse.

CLARENCE W. ROBNETT."

Mr. GORDON.—Q. Did Ed. Knight go to the timber with you, too? A. He didn't.

Q. Did you have any talk with him about Ed. Knight?

A. I didn't even know Ed. Knight at that time.

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mr. Robinson, how long after you made your final proof was it that you sold your claim? You made your final proof, I believe the records show, about June 21, 1903, and the deed is dated October 16, 1905. That is about the time you held your claim, is it, before you sold it?

A. Well, I don't remember. It seems to me like it was a couple of years. I sold it at fair time, just before the fair, the first day of the fair, something like that.

Q. When was the first conversation you had with Kettenbach regarding the sale of your land, in relation to the time you sold it to him, October 16,

(Testimony of George Ray Robinson.)

1905, how long before that?

A. I don't know for sure. It seems to me like I met him on the street, since I think about it now, I think I met him on the street, and he told me to come in there, either that or else Robnett sent me in, I have forgotten which for sure, but one or the other one I saw and they told me to come in the bank and they would give me \$1,000.00 for the claim and I could have all the note didn't call for.

Q. What?

A. I would get the difference between that and the note.

Q. Didn't you go to Kettenbach and ask him to buy it? [1178—848]

A. I don't know. I tried to sell it pretty hard. I don't know whether I tried to sell it to him.

Q. Do you remember what he told you when you went to him and asked him to buy it?

A. Well, he said he would give me \$1,000.00, but whether it was him or Robnett sent me there I am not positive, but I guess I spoke to him on the street.

Q. And don't you remember he told you you had better keep your claim?

A. No, I don't remember that. I remember he sent me a statement a time or two to pay up the interest.

Q. How is that?

A. I remember I got a statement to pay up the interest a time or two.

Q. Do you remember of overtaking Mr. Kettenbach on the street at one time and talking to him

(Testimony of George Ray Robinson.)

about this claim and about your note and mortgage?

A. I believe I did.

Q. Do you remember what you said to him at that time and what he said to you?

A. No, not altogether. One time,—I guess it was probably the time he told me to come into the bank and he would buy the claim of me, I suppose that is the time, very likely.

Q. Now, don't you remember that Mr. Kettenbach told you to keep your claim and to pay the interest or the principal in \$5.00 payments?

A. Yes, sir.

Q. You remember that, do you?

A. Yes. It was some time,—I don't remember whether it was this particular time you think of or not.

Q. Well, at some time during these negotiations with Mr. Kettenbach he told you to keep your claim and pay him in \$5.00 payments, [1179—849] or any payments you could make? A. Yes.

Q. To pay him \$5.00 a month?

A. Yes, he wanted me to do that.

Q. Now, didn't you tell him that you couldn't sell your claim and you didn't want to keep it?

A. Yes.

Q. Didn't he also tell you that if you wasn't satisfied, if you would come in he would look over the papers and see how much he could allow you for the claim? A. Yes.

Q. And he had carried your note then something over a year, upwards of two years? A. Yes.

(Testimony of George Ray Robinson.)

Q. And then you went to the bank in a day or two for him to figure up what he could give you?

A. I did.

Q. And it was that time that you reached the agreement to sell him the land? A. Yes, sir.

Q. And you had had no agreement with him before that time? A. No, no agreement.

Q. Now, do you know when it was that you gave Robnett the option? Do you know whether you gave him a written option or not? A. I did.

Q. On the day you proved up?

A. I don't know about that; I think I gave him two options, I am sure.

Q. You gave him one about the time you proved up? A. I think I did.

Q. And that was a written option?

A. I know I gave him one written option, maybe two or three, I am not sure. [1180—850]

Q. Then, after that you gave Mr. Emory an option? A. Yes, sir.

Q. Now, you had no contract or agreement with Mr. Robnett to sell the land to him at the time you made your proof, did you? A. No.

Q. Or at the time you made or filed your sworn statement, at the time you filed on the land?

A. I never had any agreement to sell it to him, no.

Q. And you never had any agreement to sell it to anyone else until after you made your final proof, did you?

(Testimony of George Ray Robinson.)

A. No. We never had no agreement to sell to anyone.

Q. At the time you filed your sworn statement, the affidavit you made at that time is as follows: "That I have made no other application under said acts; that I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit, and that I have not, directly or indirectly, made any agreement or contract, or in any way or manner with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself." That affidavit was true, was it?

A. Well, I had to give a note for the money, I had to give a mortgage for the note.

Q. I know, but you had no contract to sell it to anyone before you made your final proof?

A. No, no particular contract.

Q. And the only understanding you had was that you would give a mortgage on it to secure the money you borrowed? A. Yes.

Q. That is the only contract you had, and you never had any contract with either Mr. Kester, Mr. Kettenbach or Mr. Dwyer until your agreement some two years after you made your final proof to sell it to them? [1181—851] A. No, sir.

Mr. TANNAHILL.—That is all.

(Testimony of George Ray Robinson.)

Redirect Examination.

(By Mr. GORDON.)

Q. Mr. Robinson, you answered a question here of Mr. Tannahill's in which you said you didn't have any agreement to sell it to anyone. What did you mean by that?

A. We had no person to sell it to.

Q. You mean the person it was to go to wasn't mentioned? Is that what you mean?

A. No, nobody ever mentioned who it was to go to, but Mr. Robnett had someone in view that he could sell it to, thought he could.

Q. I mean, you were asked if you had an agreement to sell, and you said you didn't have an agreement to sell it to anyone, and you sort of hesitated. Did you mean to say that you didn't have any agreement with Mr. Robnett that he could sell it?

A. He was to sell it, yes, sir; he was to sell the claim for us. If he hadn't,—if I hadn't thought he was going to take it off my hands I never would have taken it.

Q. When you said you didn't have an agreement to sell it to anyone you mean that no one had been mentioned, is that right?

A. No one had ever been mentioned.

Q. Do you remember when you went to the bank the first time after you talked with Mr. Robnett and Mr. Ferris, that Mr. Robnett showed you that sworn statement to go over before you filed any paper, your first papers? A. The numbers of the land?

Q. At the time you were getting the numbers of

(Testimony of George Ray Robinson.)

the land that he gave you the sworn statement, or the first paper you filed in the land office, to read over? [1182—852]

A. I don't remember. We got them in the bank, I know.

Q. Do you remember that in reading that paper over, the question of whether or not you were taking it up for your own use and benefit was discussed?

A. Yes, I believe it was.

Q. And do you remember whether or not Mr. Robnett explained to you that it was for your exclusive use and benefit, as you were to get the money over and above the note? A. Yes, sir.

Mr. GORDON.—I guess that is all.

Recross-examination.

(By Mr. TANNAHILL.)

Q. Mr. Robinson, you are the same George Ray Robinson who testified against Clarence W. Robnett at Moscow when he was convicted of subornation of perjury, are you not? A. I am.

Q. You stated that you felt the weight of your statement that you had been upon the land more since you made the statement than you did before. You knew that the Circuit Court of Appeals has decided and held that it wasn't necessary for you to be on the land, and your statement that you made that you had been upon the land was not perjury, did you know that? A. I didn't know that; no, sir.

Q. And they also held that it wasn't necessary for you to be on the land before you made final proof, and any statement that you made at the land office

(Testimony of George Ray Robinson.)

that you had been on the land before you made final proof, that that was not perjury either? In other words, that you had done nothing wrong in saying that you had been on the land when you hadn't, and Robnett had done nothing wrong in inducing you to say that you had been on the land if you hadn't. Did you know that?

A. Why did they ask us under oath, if that wasn't legal? [1183—853]

Q. Well, that was a rule of the department; it isn't the law. That was a rule of the department, that they had those questions answered, and the Circuit Court of Appeals held that the department had no right to make such a rule as that.

A. Well, I don't believe they have myself, but they made them just the same.

Mr. TANNAHILL.—That is all.

Mr. GORDON.—That is all. [1184—854]

[Testimony of Ellsworth M. Harrington, for
Complainant.]

ELLSWORTH M. HARRINGTON, a witness called on behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. What is your name?

A. Ellsworth M. Harrington.

Q. Have you ever testified at any trial before?

A. No, sir.

Q. Never made a statement or signed one for

(Testimony of Ellsworth M. Harrington.)

anybody, have you? A. No, sir.

Q. Where do you reside? A. Lewiston.

Q. What is your occupation, Mr. Harrington?

A. Engineer.

Q. What kind of an engineer? A. Stationary.

Q. Where did you reside in March, 1903?

A. Lewiston.

Q. Do you know Clarence W. Robnett?

A. Yes, sir.

Q. Are you related to him in any way?

A. Yes, sir.

Q. What is the relation? A. Brother in law.

Q. Did you marry sisters?

A. He married my sister.

Q. He married your sister? A. Yes, sir.

Q. Were you married in 1903? A. Yes, sir.

Q. Of what did your family consist?

A. I think my wife and I think four children, I think. [1185—855]

Q. What was your salary at that time?

A. About \$3.00 a day.

Q. Were you employed in March, 1903?

A. Yes, sir.

Q. And had been regularly? A. Yes, sir.

Q. You took up a timber claim, did you not?

A. Yes, sir.

Q. I show you timber and stone land sworn statement, dated March 20, 1903, signed Ellsworth M. Harrington, and ask you whether or not you signed that paper on the date it bears and filed it in the land office? This is the first paper you filed in the land

(Testimony of Ellsworth M. Harrington.)

office? A. Yes, sir.

Q. I show you nonmineral affidavit signed Ellsworth M. Harrington, of the same date. Did you sign that paper? A. That is my signature.

Q. I show you the testimony of Ellsworth M. Harrington, given at final proof, June 15, 1903, and ask you if you signed that paper? A. Yes, sir.

Q. I show you the cross-examination of Ellsworth M. Harrington, taken at final proof. Is that your signature to that paper? A. Yes, sir.

Q. Mr. Harrington, did anyone suggest to you taking up a timber claim?

Mr. TANNAHILL.—The defendants severally object to any evidence of the witness relative to taking up a timber claim in so far as the evidence relates to bills No. 406 and 407, upon the ground and for the reason that the entry of the witness is not involved in either of these actions, and the evidence is irrelevant and immaterial.

Mr. GORDON.—Do you remember the question?

WITNESS.—I think I do. I don't remember. You had better state [1186—856] it again, I believe.

Thereupon the stenographer repeated the last question.

A. Why, I don't recollect; I don't remember.

Q. Well, state the circumstances of your taking up a timber claim.

A. Well, I think that I asked Mr. Robnett something about taking up a claim, I think.

Q. Did you know at that time that he was inter-

(Testimony of Ellsworth M. Harrington.)
ested in persons taking up timber claims?

A. Yes, sir.

Q. Did you know of any other persons he had gotten to take up timber claims?

A. Not that I know of; no.

Q. Well, what did you say, what did he say to you when you asked him about taking up a timber claim?

A. I believe he asked me if I wanted to take up a claim, I think.

Q. Well, what happened then?

A. Well, I think I told him I did.

Q. Well, did you tell him you didn't have the money to take up the claim? A. Yes, sir.

Q. What was said then?

A. I think he said he could arrange for that part of it; I wouldn't be certain whether those was the exact words or not that he stated.

Q. What we want is the transaction as you remember it.

A. That is as near as I can recollect.

Q. How long was that before you filed on the claim, that you had this conversation with Mr. Robnett?

A. Oh, it was probably a month or two or three months, a month or so, I don't know just exactly.

Q. Did he tell you that he would have one for you later? [1187—857] A. I don't remember.

Q. Well, was anything said about what it would cost to take up a timber claim?

A. Why, I don't know exactly,—four or five hundred dollars, in that neighborhood; the exact figures I don't remember.

(Testimony of Ellsworth M. Harrington.)

Q. Were you notified by anyone of the time that you should start to look over this timber before you filed? A. I think so.

Q. Now, just tell all that happened, from the time you first talked with Mr. Robnett until you got through with the transaction.

A. Well, I think he told me that I wouldn't need to go on the timber before I filed, I think.

Q. Well?

A. And he said I was familiar with the timber up there; I used to be up on the river a good deal, and he said I could file, and I think I filed, and later proved up, I think.

Q. You did make a pretense of going to the timber, though, didn't you? A. Yes, sir.

Q. With whom did you start for the timber?

A. Why, I don't remember. There was several in the party.

Q. Well, see if I can refresh your recollection. Was Mr. Benjamin F. Long with you?

A. Yes, sir.

Q. Mr. John H. Long?

A. Yes, all the Longs, I think, were there, three Longs.

Q. And Francis M. Long?

A. Yes, the old man, the boys' father; I don't know what his initials are.

Q. Now, who else was along?

A. Well, Benton was at the head of the party, I believe.

Q. Who was Benton? What is his name,—Will-

(Testimony of Ellsworth M. Harrington.)

iam B. Benton? [1188—858] A. Yes.

Q. And was Ed. Knight along?

A. He was along, but he wasn't going with us; he was on a trip, but he was with the party, but he wasn't going with us.

Q. How far did you go?

A. Somewhere near Dent, I think.

Q. Was Mr. Ferris along?

A. Not that I recollect; I don't think so.

Q. Why didn't you go all the way to the timber after you had gotten that far?

A. Well, sir, I think Mr. Benton said he had to be back in Lewiston at a certain date, and he didn't have time to go any further.

Q. Well, who paid your expenses up that far?

A. I think I paid my own expenses.

Q. Did anyone give you the money to pay them?

A. No, sir.

Q. Then, you returned to Lewiston?

A. Returned to Lewiston.

Q. Did you see Mr. Robnett after you returned to Lewiston before you filed?

A. Why, I think I seen him several times.

Q. Where did you see him?

A. Well, I don't remember exactly; I seen him probably at my mother's house, or probably several other places. I don't remember.

Q. Did you go to see him to get the description of the land or get the papers to file?

A. I think so.

Q. Where did you see him on that occasion?

(Testimony of Ellsworth M. Harrington.)

A. At the bank, I think.

Q. Was it at the window or some other part of the bank? A. Why, I don't remember. [1189—859]

Q. Do you remember whether you and he discussed whether or not you should swear in the land office that you had gone over this land and personally examined it? A. I think so.

Q. What was said about that?

A. Well, I think he told me that I would have to swear that I had been on the land, I think.

Q. And did he hand you this paper that you have identified as the sworn statement, or did he tell you to go somewhere else and get it?

A. I think he,—let me see (witness pauses)—I think there was an attorney in the Thiessen Block, I think, that made that paper.

Q. Nickerson?

A. No, I don't think it was Nickerson.

Q. Well, were you directed there by Mr. Robnett?

A. Yes, sir.

Q. Do you remember whether you paid anything for having those papers prepared?

A. I don't think so; I don't remember.

Q. Then, you went to the land office, and do you remember whether you paid any fee there or not?

A. For filing, you mean?

Q. Yes. A. I think so.

Q. Are you sure about it?

A. I am not positive, no, but I think I did.

Q. With whom did you go to the land office that time?

(Testimony of Ellsworth M. Harrington.)

A. Why, I think Mr. Gardner, I think.

Q. He was at the land office, but did anyone go to the land office with you?

A. No, I don't think so; I don't remember, but I don't think so, Mr. Gordon. [1190—860]

Q. Now, were all the arrangements made before you went to the land office to file relative to where you would get your expense money?

A. I think so.

Q. That was the first talk you had had with Robnett about it? A. At that time?

Q. Yes.

A. Well, I think I had talked to him before that; I think so.

Q. But all this talk relative to getting the money to make your proof with was had before you filed any papers? A. Yes, sir.

Q. Now, was anything said as to what there was in this transaction for you?

A. No, sir, nothing said.

Q. Not a thing? A. Not a word.

Q. Was anything said about selling the land?

A. Not a word.

Q. Was anything said about what the land was worth?

A. There may have been; I don't remember. I think there were, though; I think it was in the neighborhood of \$1,000.00. I ain't positive, though.

Q. Now, what was said? Was it said that you could get \$1,000.00 out of it?

A. Well, no, he may have said it was worth in

(Testimony of Ellsworth M. Harrington.)

that neighborhood, of \$1,000.00; there was nothing said positive what it was.

Q. Now, as I understand, Mr. Robnett first broached this subject to you?

A. That is the way of it, I think.

Q. And suggested that he would advance you the money for the purpose of taking it up?

A. Yes. [1191—861]

Q. Now, what was there in it for him?

A. Well, he was to get a commission out of it, for selling the claim, I think.

Q. Then, he was to sell the claim?

A. No, he wasn't to sell it—if he did sell it he was to get a commission for selling it; there wasn't no agreement that he was to sell it.

Q. You mean you didn't have any written agreement?

A. No, nor no verbal agreement in that way, not positive. He was dealing in timber claims, and if he had a chance to sell it he had my permission to sell it.

Q. That was the original understanding, was it not?

A. I don't think there ever was any exact understanding made about it. It was a kind of a—I don't know whether you would call it a mutual agreement or not; we were brother in laws, and naturally, as he was in the timber business he would handle my claim for me.

Q. And you expected that, didn't you?

A. Yes, sir.

Q. And you understood the first time you talked

(Testimony of Ellsworth M. Harrington.)

with him about it that he was to handle it for you?

A. There wasn't anything said positive that he was or wasn't; I don't think it was mentioned at all.

Q. Do you remember whether or not he told you he was assembling a number of claims and that he had a person who was going to take them, and that that person would take those claims about the first of July, and that he would put yours in with them?

A. Possibly there may have been something said like that; I don't remember.

Q. Of course, I am not testifying, Mr. Harrington, and I am not suggesting these things to you for the purpose of having you say yes or no. I want to see if that doesn't refresh your recollection of the [1192—862] transaction. This has been some time ago, I understand.

A. Two or three different times he was trying to dispose of those claims; it may be that he spoke that way at times, I don't know.

Q. You understood, though, that his interest in the matter was occasioned by the fact that he expected to get a commission out of it?

Mr. TANNAHILL.—We object to that as leading and suggestive. A. Yes, sir.

Mr. GORDON.—Q. Then, it came around time for you to make proof, the time to make proof arrived, and did you see Mr. Robnett about that time?

A. To make final proof?

Q. Yes. A. Why, I think so; yes.

Q. Well, now, where did you get the money with

(Testimony of Ellsworth M. Harrington.)

which you made your proof?

A. The Lewiston National Bank.

Q. From whom?

A. Who did I get it from?

Q. Who from? A. I got it from Robnett.

Q. Whereabouts?

A. At the Lewiston National Bank.

Q. What part of the bank? Did you go in one of the back rooms, or was it given to you through the window?

A. I think it was in the directors' office, I think.

Q. How much did you get on that occasion?

A. I think \$500.00, I think.

Q. And was that the day you made your proof?

A. Yes, sir, I think so.

Q. And did you go directly from the room that you had met Mr. Robnett in and make your proof in the land office? [1193—863]

A. I think I went to the Thiessen Building and had some papers made out; I don't remember.

Q. Did you discuss with him any questions you would have to answer in the land office, when you received that money? I am speaking now of the time you made proof.

A. I know. Of the time I made final proof?

Q. Yes.

A. I expect we did; I don't remember.

Q. Don't you remember of him reading a question to you that you would have to answer, as to where you had gotten the money with which you were making proof, and how long you had had the same in

(Testimony of Ellsworth M. Harrington.)

your possession?

A. Yes, sir, I think I do remember.

Q. Did he have a set of those papers down there for you to go over? A. I don't think so.

Q. What did he tell you you would have to say?

A. He told me I would have to say I proved up with my own money.

Q. But the money that you used in the land office was the money Robnett gave you there, is that correct? A. Yes, sir.

Q. And you stretched the truth a little when you testified that you had worked for it and had had it in your possession three or four months, is that correct? A. Yes, sir.

Q. Now, when you paid that \$400.00 into the land office—you paid \$385.97 in the land office—they gave you a receipt for that, did they, the receiver?

A. I don't recollect.

Q. He gave you some paper, didn't he?

A. I have an idea he did; I don't remember, though.

Q. Do you remember whether or not you took that paper to Mr. [1194—864] Robnett immediately after that?

A. I don't remember; I don't remember of him giving me a paper.

Q. Did you sign a note to Mr. Robnett when you received that money? A. Not at that time.

Q. How long afterwards?

A. Probably a couple of days, I think; I don't remember exactly; a few days.

(Testimony of Ellsworth M. Harrington.)

Q. You signed a note for how much?

A. I think it was about \$500.00; I have forgotten the exact amount.

Q. Did you ever give him but the one note for it, or don't you remember? A. I don't remember.

Q. Do you know where that note is now?

A. I do not.

Q. You got a little over \$500.00, is that correct?

A. At the time that I—

Q. Yes.

A. I don't remember; it was in the neighborhood of \$500.00; I don't remember.

Q. Did you pay a location fee?

A. I don't think so. I paid it out of this; it was paid out of this whole thing.

Q. You mean it was held out on you?

A. Yes, it was, out of the \$500.00, I think; that covered the whole expense.

Q. Did he give you \$500.00, or did he just give you enough to pay in the land office?

A. I think it was \$500.00, I think. [1195—865]

Q. You are not very clear about it?

A. No, I am not very clear about it.

Q. You say you gave him a mortgage several days later?

A. A few days later; I don't remember the exact number of days.

Mr. GORDON.—Have you got the deed, Mr. Tannahill?

Mr. TANNAHILL.—Yes.

Q. (By Mr. GORDON.) Then later you sold this

(Testimony of Ellsworth M. Harrington.)

claim, did you? A. Yes, sir.

Q. How much cash did you get when you sold it?

A. Above all expenses?

Q. Yes, how much did you get out of it?

A. \$299.40, I think, either forty or sixty.

Q. Who negotiated the sale for you of this property, Mr. Harrington? A. I think it was Robnett.

Q. Do you know to whom you sold?

A. I sold to W. F. Kettenbach, I think.

Q. Did Robnett get anything out of it that you know of? A. I don't know.

Q. That didn't concern you, did it?

A. No. I have an idea he did, but I don't know. I know I got—I stated that.

Q. I show you deed, signed by Ellsworth M. Harrington and Anna E. Harrington, dated May 8, 1906, running to W. F. Kettenbach. Is that the deed? Did you sign that deed?

A. Yes, sir, that is my signature.

Q. And that is your wife's signature, is it?

A. Yes, sir.

Q. And that is the only deed you ever made to this land, is it? A. Yes, sir. [1196—866]

Mr. GORDON.—It is stipulated by and between the parties hereto that the witness Ellsworth M. Harrington and his wife, Anna E., made and executed a deed dated May 8, 1906, conveying to W. F. Kettenbach, in consideration of \$1,000.00, lot numbered one, and the northwest quarter of the northeast quarter and the north half of the northwest quarter of section 24, in township 39 north of

(Testimony of Ellsworth M. Harrington.)

range 3 east, Boise meridian; that said deed was acknowledged before C. H. Lingenfelter, a notary public, May 9, 1906, and was recorded at the request of the Lewiston National Bank May 12, 1906, in Book 81 of Deeds, page 621, in the records of the recorder of Nez Perce County, State of Idaho.

Mr. GORDON.—We offer in evidence the timber and stone land sworn statement of Ellsworth M. Harrington, dated March 20, 1903, the nonmineral affidavit of Ellsworth M. Harrington, the testimony of Ellsworth M. Harrington at final proof, and the cross-examination of Ellsworth M. Harrington at final proof, all of which papers have been identified by the witness; the testimony of the witnesses at final proof, and the cross-examination of them; the receiver's receipt and the register's certificate, dated June 15, 1903, a certified copy of the patent issued to Ellsworth M. Harrington, dated August 3, 1904, all relating to the entry of lot one, and the northwest quarter of the northeast quarter, and the north half of the northwest quarter of section 24, in township 39 north of range 3 east, Boise meridian. We also offer a certified copy of the receiver's receipt referred to, which was recorded at the request of W. F. Kettenbach June 20, 1903, in the office of the recorder of Shoshone County, Idaho. We also offer in evidence a certified copy of a mortgage made and executed by the witness Ellsworth M. Harrington and wife, Anna E., dated June 16, 1903, conveying to Clarence W. Robnett lot one, and the northwest quarter of the northeast quarter and the north

(Testimony of Ellsworth M. Harrington.)

half of the northwest quarter of section 24, in township 39 north of range 3 east, Boise meridian, to secure a note of even date, in the sum of \$729.75, made by Ellsworth M. Harrington and Anna E. Harrington, to the order of [1197—867] Clarence W. Robnett, payable one year after date, with interest at one per cent per month, acknowledged before John E. Nickerson, June 16, 1903, and recorded at the request of W. F. Kettenbach June 20, 1903, in the office of the recorder of Shoshone County, Idaho.

Said above mentioned documents were thereupon marked by the stenographer as Exhibits 34, 34A, 34B, 34C, 34D, 34E, 34F, 34G, 34H, 34I, 34J, 34K, 34L, 34M, 34N, and 34O.

Mr. TANNAHILL.—The defendants severally waive any further identification of the documents, but object to each and all of the documents offered in support of bills No. 406 and 407, upon the ground that the entry of the witness is not involved in these two particular actions, and they are irrelevant and immaterial. And the defendants severally object to the final proof papers being admitted in evidence in support of either of the actions, on the ground that they are matters relating to final proof, and long after the filing of the sworn statements, and they are irrelevant and immaterial.

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mr. Harrington, I will ask you how long did you keep your land before you talked with Mr. Kettenbach regarding the sale of it to him?

(Testimony of Ellsworth M. Harrington.)

A. Why, I think it was about three years, two or three years.

Q. And how long before May 8, 1906, the day you executed the deed, did you talk with Mr. Kettenbach regarding it?

A. I never talked with Mr. Kettenbach at all.

Q. You never talked with him at all? A. No.

Q. Who did you talk with regarding the sale of your land at that time? [1198—868]

Q. And how long before May 8, 1906, did you talk to Mr. Robnett about a sale of it to Mr. Kettenbach?

A. I don't remember.

Q. About how long?

A. At this time that I sold the claim, you mean?

Q. Yes.

A. Well, it might have been a month or two months or more; I don't remember exactly.

Q. It was longer than three months, you think?

A. It may have been.

Q. Was it as much as six months?

A. I don't remember; I couldn't say.

Q. Now, what brought about a sale of the land to Mr. Kettenbach?

A. You mean how he came to buy it?

Q. Yes.

A. Why, I suppose he was buying timber; that is all I know; was in the market buying timber.

Q. Did you tell Robnett to try to sell it to him?

A. Why, I think at that time, I think Mr. Robnett had an option on the claim at that time.

Q. He had an option on it?

(Testimony of Ellsworth M. Harrington.)

A. I think so; I am not positive.

Q. What did he say when he first talked to you about it?

A. I think he told me he had a sale for the claim.

Q. What did you tell him?

A. Well, I expect I told him to go ahead and sell it.

Q. Did he tell you to whom he had a sale for it?

A. I don't think so.

Q. Did he tell you how much, what he could get for it? A. I don't remember; I don't think so.

Q. Did you have any talk about the price at all?

A. I don't remember; I don't think so. [1199—869]

Q. Now, when did you first learn how much you were going to get for the claim?

A. Well, I can't tell; near that time he may have told me he could sell it for \$1,000.00.

Q. The best of your recollection is that about that time he told you he could sell it for \$1,000.00?

A. Yes, I think so.

Q. Now, had you given anyone else an option on it in the meantime?

A. I think so, I think Joe Malloy had an option on it before this, maybe a year or six months, maybe more.

Q. Had you tried to sell it to anyone else besides Malloy? A. Not personally; no.

Q. Had Mr. Robnett tried to sell it to anyone else before that, that you know of?

A. I think the Clearwater Timber Company, I

(Testimony of Ellsworth M. Harrington.)

think; I think they were figuring on buying some of those claims, I think.

Q. Do you know whether Robnett had any negotiations with them about buying it?

A. I don't know whether he had any personally or not.

Q. Do you know whether he had given them an option on it or not? A. I don't know.

Q. As I understand you, at the time you filed on this land, and at the time you made your final proof, you had no agreement with anyone to sell the land to them? A. No, sir.

Q. And you had no agreement even with Robnett to sell the land to him at that time? A. No, sir.

Q. And you hadn't given him an option on it at that time? A. No, sir. [1200—870]

Q. Then, the affidavit you made when you filed your sworn statement, "That I have made no other application under said acts; that I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit, and that I have not, directly or indirectly, made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself," was true, was it not? A. Yes, sir.

Q. It was true at the time you made it, and at the time you made your final proof? A. Yes, sir.

Q. And it is still true? A. Yes, sir.

(Testimony of Ellsworth M. Harrington.)

Mr. TANNAHILL.—That is all.

Redirect Examination.

(By Mr. GORDON.)

Q. You said something about the Clearwater Timber people wanting to buy it. Were they negotiating with you or with Mr. Robnett?

A. With Mr. Robnett, I think; nobody ever came to me about it.

Q. And this option you gave to Joe Malloy, did you give that to Mr. Robnett?

A. Mr. Robnett got it for me, yes.

Mr. GORDON.—That is all.

At this time an adjournment was taken until ten o'clock to-morrow morning. [1201—871]

On Friday, the 2d day of September, 1910, at ten o'clock A. M., the hearing was resumed.

[Testimony of Mrs. Frances A. Clausen, for Complainant.]

Mrs. FRANCES A. CLAUSEN, a witness heretofore called by the complainant, and duly sworn, being recalled by the complainant, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. It is hard for me to remember just where I left off exactly.

A. Well, the last question you asked me I don't realize what it was. I don't remember.

Q. Now, Mrs. Justice, when—

A. Mrs. Clausen.

(Testimony of Mrs. Frances A. Clausen.)

Q. Mrs. Clausen, I should say—when you retired from the stand the other day I had been asking you a question relative to the talk you had had with Mr. Dwyer, before you went up to view the timber claim, and I had asked you some questions and asked you whether you remembered them having been asked you at one of the previous trials at which you had attended and appeared as a witness on behalf of the Government. So taking the examination up from that point we will go along easy with this examination, and if you feel indisposed at any time, why you just say so, that's all, and if you feel in distress in any way why you just indicate it, and we will stop and get you all the air you want, or any other restorative or refreshment, which you feel you may need.

A. Thank you.

Q. I had just read these questions, and I shall read them again at the present time and ask you if you remember them. I read from page 382 of record 1605, and ask you whether or not you remember these questions being read to you at the time I have referred to, and whether [1202—872] you made the replies which I shall also read:

“Q. Who was going to show you the claim?

“A. Mr. Dwyer was the locator.

“Q. Did you pay your own expenses on the way up there and back?

“A. My expenses were all paid.

“Q. By whom, if you know?

“A. By Mr. Dwyer.”

Do you remember whether or not those questions

(Testimony of Mrs. Frances A. Clausen.)

were asked you, and those answers made by you?

A. Yes, sir.

Q. That is correct, is it? A. Yes, sir.

Q. "Q. Have you had any talk with Mr. Dwyer about this matter of expenses before going up there?

"A. Yes, sir.

"Q. Can you state what was said about the matter and the matter of taking up a timber claim?

"A. Well, I didn't have money to take a claim with, and I asked Mr. Dwyer if he would get the money for me to take a claim, and he said he thought he could get the money for me, and he got the money.

"Q. What do you mean, what money do you mean you had him get for you?

"A. The money to pay all expenses for a claim for locating and my expenses there and back and for filing and for paying for the timber."

Do you remember those questions being asked you? A. Yes, sir.

Q. And those answers made by you?

A. Yes, sir.

Q. And they are the facts, are they not?

A. Yes, sir, they are the facts. I asked him to get the money for me, and he got it as I requested.

Q. Now, the next question: [1203—873]

"Q. Now, state everything in relation to that, Mrs. Justice. Did you have any understanding with Mr. Dwyer before going up to the timber about your timber claim? A. Yes.

"Q. Now, state what that understanding was.

"A. That he would get the money for me for a

(Testimony of Mrs. Frances A. Clausen.)

claim and then I would go up there and take a claim. It was a verbal agreement. I thought I would get \$150.00 clear of all my expenses.”

Do you remember those questions being asked you, and those answers made by you?

A. I remember those questions being asked me, and I answered to them, and it was to be—we figured on it, and the way the claims were selling it would bring about \$150.00 or \$200.00 above expenses, if we got a chance to sell the claim at the way they were selling.

Q. That was your understanding at that time?

A. Yes, sir.

Q. Now, do you remember this question being asked you:

“Q. What were you to do with your claim to get \$150.00?

“A. I was to file on the claim and prove up on it.”
That is correct, is it?

A. Yes, sir. That is the only way you could get the claim, was to file on one and prove up and sell it, to get anything out of it.

Q. “Q. And then, what were you to do after you proved up, if anything, in order to get the \$150.00?

“A. I gave a contract of a deed for the timber.

“Q. I am asking you with regard to the understanding between you and Mr. Dwyer before you went up there? What were you to do with this land when you got title to it?

“A. I would sell it; I would get \$150.00 for my chance in the claim.”

(Testimony of Mrs. Frances A. Clausen.)

Do you remember those questions and answers, Mrs. Justice?

A. I don't remember that. [1204—874]

Q. Well, are they the facts, as you understand them?

A. I was to give a contract to secure that money, and I gave a contract to secure the money until I should sell the claim.

Q. Do you remember when you gave that contract? Did you give it when you first spoke to him about it? A. No, sir.

Q. It was after you made the proof?

A. Yes, sir.

Q. The next question:

“Q. For your chance. Who did you get the \$150.00 from?

“A. Well, he paid me the \$150.00 and I don't know—the claim was made over to the bank, if I remember right, to pay for the note which I had in the bank.”

Is that correct?

A. The contract was made out in favor of the one he got the money from.

Q. And he gave you the \$150.00—Mr. Dwyer?

A. Yes, sir. He was to furnish me with all money to get the claim, and pay all expenses, and then I paid it back when I sold the claim, but I requested him to get all money for me.

Q. And you sold it to Mrs. Kittie E. Dwyer, the wife of Mr. William Dwyer? A. Yes, sir.

Q. And he gave you the \$150.00?

(Testimony of Mrs. Frances A. Clausen.)

A. I got more than \$150.00.

Q. Well, how much did you get?

A. I got \$225.00.

Q. Now, the next question, Mrs. Clausen, reading from the same record, and I will ask you if you remember this question and answer:

“Q. What I want to know is whether or not you had any agreement or understanding with Mr. Dwyer before you went up to the timber as to what you were to do with the land after you got title to it? [1205—875]

“A. Why, he would find a buyer for it; I was to sell it.” Is that correct?

A. He told me that he thought he could find a buyer for it.

Q. Yes?

A. He would try and find a buyer for my claim.

Q. And you were going to sell it?

A. Well, yes, sir; I intended to sell that claim when I took it, if I ever got the chance.

Q. “Q. What were you to get out of it?

“A. I was to get \$150.00 clear of all expenses.”

Is that the understanding?

A. The understanding was from the way we figured that it should bring \$150.00 or \$200.00 at the way claims were selling, above expenses. There was no terms that there should be that much, but we thought they would bring that much.

Q. Now, you say that you went with your husband and your son, Mr. Fred. Justice, and a number of others?

(Testimony of Mrs. Frances A. Clausen.)

A. I beg your pardon. I said that Fred. Justice didn't go when I went.

Q. Well, if I am wrong, I am not trying to lead you into saying something.

A. Well, my husband went with me, and Mr. Hopper, and Mr. Dwyer, and Mr. Ed. O'Brien, and I can't remember if there was anyone else or not at the time.

Q. Now, who was with you when you had your talk with Mr. Dwyer? A. My husband.

Q. And was your son along?

A. I can't remember whether he was there or not at the time. I talked with Mr. Dwyer a good many times about getting a claim.

Q. Then, you went up into the timber with this party, did you not? A. Yes, sir, I did.

Q. You went to Orofino? [1206—876]

A. Yes, sir.

Q. And then went from there to Pierce on horse-back? A. Yes, sir.

Q. And then, you went into the timber?

A. Yes, sir.

Q. And Mr. Dwyer located you?

A. Yes, sir; he showed me the corner stakes of the claim.

Q. Now, do you remember when this was, relative to the time that you made your filing?

A. I can't remember dates.

Q. Well, was it in the fall before? That's what I want to know.

A. Yes, sir; it was in the fall.

(Testimony of Mrs. Frances A. Clausen.)

Q. It was in October, was it not.

A. Well, I can't remember whether it was September or October.

Q. And you filed the following April?

A. Yes, sir.

Q. Now, do you remember who prepared your filing papers that I showed you the other day?

A. Well, I think it was Mr. West; I am not sure.

Q. And did you name the witnesses, or had somebody left the information there for him to prepare the papers?

A. I was there when he prepared the papers.

Q. Well, did you have any numbers, or had they been sent in to him?

A. I had the numbers with me.

Q. You got them from Mr. Dwyer; is that correct?

A. Yes, sir.

Q. Now, do you remember why you didn't file immediately after your return from viewing the land?

A. I don't know anything about why that was—why the filings were not made then.

Q. Now, to see if I can refresh your recollection, Mrs. Justice, [1207—877] don't you remember that those papers were made out by Mr. I. N. Smith?

A. I think that Mr. Smith—no, I don't remember whether it was Mr. Smith or Mr. West. I wasn't acquainted with either of the men, and I supposed—oh, I know that some of the papers were made out by Mr. Smith—the man that wore spectacles.

Q. They were your first papers, though?

A. Well, I don't remember. My son, Fred. Jus-

(Testimony of Mrs. Frances A. Clausen.)

tice, attended to a great deal of the business there, and I was so worried at the time that I don't remember much about it.

Q. Now, do you remember Mr. Guy Wilson and Mr. Fred. Justice being in Mr. Smith's office with you when you had your original papers prepared?

A. I can't remember now. That is a good while to remember every little detail.

Q. Now, the first paper that you filed, do you remember having that read over to you and going over it with Mr. Dwyer? A. No, sir.

Q. Now, do you remember whether this question was asked you at the trial at Moscow to which I have referred—the trial of William F. Kettenbach and others, in the spring of 1907, page 387:

“Q. How did you happen to go to Mr. Smith's office to have the papers made out?

“A. Mr. Dwyer said we could have them made out there.

“Q. Did you pay anything for having those papers made out? A. Yes, sir.

“Q. How much did you pay, if you remember?

“A. I am not positive; I think it was \$7.50.

“Q. I am speaking now not of the papers—the filing fee in the land office, but did you pay anybody for filling out these blanks?

“A. I don't remember.

“Q. Who made out the paper, if you recollect?

“A. Mr. I. N. Smith. [1208—878]

“Q. Who did the typewriting in the paper, if you remember? A. I don't know.

(Testimony of Mrs. Frances A. Clausen.)

“Q. Mr. I. N. Smith, you say, was there when the paper was made out?

“A. Yes, sir; if I remember right he was there.

“Q. Do you know who filled in the paper with a pen, you age in this blank?

“A. I am not positive.

“Q. Who asked you the question which it was necessary for you to answer?

“A. Mr. I. N. Smith.”

Now, does that refresh your recollection of the transaction?

A. Well, I can't remember for sure. I think it was Mr. I. N. Smith's office I was in, but I can't remember all those little details.

Q. I don't expect you to remember them all. Is that as near the fact as you can remember at this time? A. Yes, sir.

Q. “Q. Who else was in the office at this time that you can recall? Any members of your family?

“A. Yes, sir; Fred. Justice and Guy Wilson.”

Was that as near as you remember it?

A. Well, at that time I suppose I could have told who was in the office, but now I have forgotten. I can't remember.

Q. “Q. Were they having papers made out also?

“A. Yes, sir.

“Q. I will ask you to read over this paper, Mrs. Justice, to see if you recollect, or have any recollections of the statements that are contained in that paper? A. I don't remember.

“Q. Did you have any talk with anyone before

(Testimony of Mrs. Frances A. Clausen.)

you filed this paper as to the contents of the paper, and the statements which are made therein? [1209—879] A. Yes, sir.

“Q. With who? A. With Mr. Dwyer.”

Now, that has reference, Mrs. Justice, to the sworn statement, the first paper you filed in the land office, a little application paper; and do you remember those questions being asked you, and whether you made those answers?

A. I don't remember about the questions asked me at that time.

Q. Well, are they the facts, as you remember them now? A. I suppose they are. I don't know.

Q. “Q. Where did this conversation or these conversations occur?

“A. I talked with him at his home and also at my home about it.”

Then on the next page the examination continues:

“Paper shown witness purporting to be sworn statement in duplicate of Frances A. Justice, being an application to enter stone and timber lands at the United States Land Office at Lewiston, Idaho, the application being dated April 25th, 1904,” and that paper was identified by Mr. Goodwin. Then I will ask you whether you remember the examination being resumed and you were asked these questions: Mrs. Justice, do you remember this question being asked you?

“Q. Now, Mrs. Justice, taking this sworn statement of yours in duplicate, I will read it through: ‘I, Frances A. Justice, of Clarkston, County of

(Testimony of Mrs. Frances A. Clausen.)

Asotin, State of Washington, desiring to avail myself of the Acts of Congress of June 3d, 1878, entitled "An Act for the sale of timber lands in the States of California, Oregon and Nevada, and in Washington Territory, as extended to all of the public land states by Act of August 4th, 1892, for the purchase of lots three and four, and the east one-half of the southwest one-fourth of Section nineteen, tp. 38 north, Range 6 E. B. M., in the district of lands subject to sale at Lewiston, Idaho," do solemnly swear that I am a native citizen of the United States, of age forty-nine, and by occupation housewife.' Can [1210—880] you follow me?

"A. Yes.

"Q. (Continuing:) 'That I have personally examined said land is unfit for cultivation, and valuable chiefly for its timber, and that it is uninhabited; that it contains no mining nor other improvements, nor, as I verily believe, any valuable deposits of gold, silver, cinnabar, copper or coal; that I have made no other application under said acts. That I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit, and that I have not directly nor indirectly made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself, and that my postoffice address is Clarkston, Washington. Signed, Frances A. Justice.' I read

(Testimony of Mrs. Frances A. Clausen.)

this over for the purpose of asking you certain questions. You have already stated that you had an agreement and understanding with Mr. Dwyer before you went up to the timber relative to this land. Is that correct?

“A. I had a verbal agreement; yes, sir.”

Do you remember that being read over to you and that question asked and the answers which I have read made by you, Mrs. Justice?

A. I remember that.

Q. And that is correct, is it?

A. That is, I had an agreement as I have just told you, that he would furnish me all the money, because I asked him to get it for me; but there was no agreement such as you think, that he was to furnish me the money to sell to someone else.

Q. Now, it isn't what I think; you just tell the facts as they are. You didn't have any written agreement of any kind?

A. I didn't have any written agreement.

Q. And the only agreement you had of any kind with him was merely a verbal agreement? [1211—881]

A. There was no agreement that I would sell the claim.

Q. Now, I am not talking about that; I am speaking about the transactions that you had with him. All that you had arranged with him was just by word of mouth—just verbal? A. That's all.

Q. “Q. Now, at the time you made this affidavit, you stated in there that ‘I do not apply to purchase

(Testimony of Mrs. Frances A. Clausen.)

the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit.' Now, at that time when you made that statement, was it true or untrue? A. Untrue."

Now, do you remember that question being asked you, and that answer being made by you, Mrs. Justice? A. I don't remember that.

Q. Can't you recollect at all?

A. No, sir, I can't recollect of answering that way.

Q. I will ask you if you remember this: I read from page 399 of the same printed record:

"And this statement, 'that I have not directly nor indirectly made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself.' Now, at the time that statement was made by you, Mrs. Justice, was the statement true or untrue?

"A. Untrue."

Now, do you remember that question being asked you, and that answer made by you?

A. No, sir, I don't remember it. My answer now is that it was true, but I don't remember what I said then.

Q. You would not say that you did not make that answer then, would you?

A. I wouldn't say, because I can't remember.
[1212—882]

Q. Wasn't your recollection fresher on these matters three years ago than they are now, Mrs. Justice?

(Testimony of Mrs. Frances A. Clausen.)

A. I don't remember, for at that time I was so worried and sick that I don't know what—I couldn't remember what I did say; but I know that I was compelled by the Government to say a good deal—by Mr. Ruick—that I wouldn't have said otherwise.

Q. Now, are you not worried about this now?

A. No, sir; I am going to tell the straightforward truth about it now.

Q. That's all we want, Mrs. Justice. (Reading:)

“Q. Now, how did it happen—now, what explanation have you to give for having made these false statements at the time you filed your application to enter these lands?

“A. I was told it would be a benefit to me in one way, that I would get the \$150.00 out of it, and that that was a benefit to me from the land.

“Q. Who stated this to you? A. Mr. Dwyer.

“Q. Before I go any further, I will ask you, Mrs. Justice, if this statement was sworn to by you in the land office, this sworn statement? A. Yes, sir.

“Q. Now, this statement, ‘that I have not directly or indirectly made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself.’ How did you come to make that statement?

“A. Why, I was told how to answer those questions; that it would be all right to make that statement; that it was to be—that it was to benefit me, the

(Testimony of Mrs. Frances A. Clausen.)

money I was to get out of it, and I answered the questions that way.” [1213—883]

Do you remember those questions being asked?

A. No, sir.

Q. And those answers being made by you?

A. No, sir; I don’t remember that.

Q. Well, you were to get \$150.00 or more out of it, were you not?

A. The way the claims figured it should bring about that, if we got a chance to sell it.

Q. And you were to be benefited in that way?

A. Of course, it would be a benefit to me if I got \$200.00.

Q. “Q. What about the agreement, what, if anything, was said to you about the agreement? You stated here in this affidavit that you had no agreement directly or indirectly?

“A. Well, it was just a verbal agreement that I would sell my land—my interest in it, for \$150.00.”

Now, do you remember whether that question was asked you, and that answer made by you?

A. I don’t remember. I might have said it. I don’t remember.

Q. And that was practically as your understanding was all the way through, was it not, Mrs. Justice?

A. Why, I expected when I sold it I would get about that, the way the land was selling. There was no agreement to that.

Q. Continuing I will ask you if you remember at the same trial these questions being asked you, and these answers made by you:

(Testimony of Mrs. Frances A. Clausen.)

“Q. That’s what I want to know; what we want to know is who, if anyone, suggested to you at that time that you could answer it this way?

“A. Mr. Dwyer told me how to answer the questions; I don’t know how I answered that.

“Q. What did Mr. Dwyer say to you about this matter of the agreement? Do you recall what he said or what explanation or argument he made or gave to you?

“A. I don’t just understand. [1214—884]

“Q. Do you know that you stated here in this paper that you had no agreement, directly or indirectly, or any contract, in any way or manner with any person whomsoever? Now, then, did you have an agreement at that time?

“A. Why, that is not an agreement, is it? If it is, just a verbal agreement.”

Do you remember those questions being asked you, and those answers made by you?

A. No, sir; I don’t remember that question, either.

Q. “Q. Did you have a verbal agreement at that time? A. I did with Mr. Dwyer.

“Q. Now, then, you had some agreement, we will say. How did you come to answer that question that you had no agreement directly or indirectly, no agreement?

“A. Why, I was told that that was no agreement, a verbal agreement. A verbal agreement was no agreement.”

Now, do you remember those questions being asked you, and those answers being made by you?

(Testimony of Mrs. Frances A. Clausen.)

A. I was told that on the witness-stand one time when I was questioned, and they said it was an agreement, and a lawyer said that a verbal agreement was no agreement, unless it was a written agreement.

Q. What lawyer was that, Mrs. Clausen?

A. His name was Dick.

Q. That was before this?

A. Yes, sir, a long time.

Q. And that is where you got your understanding that a verbal agreement was no agreement?

A. Yes, sir.

Q. Now, do you remember whether Mr. Dwyer also told you that? A. No, sir; he didn't tell me that.

Q. Are you sure of that?

A. Well, if he did, I don't remember it. [1215—885]

Q. Now, I will ask you whether or not this question was asked you at the same time:

“Q. Who told you that?

“A. Mr. Dwyer told me that that was no agreement; a verbal agreement.

“Q. That a verbal agreement was no agreement?

“A. No, sir.”

Now, does that refresh your recollection any in this matter?

A. No, sir; I don't remember that at all.

Q. “Q. How long before you went to the land office do you recall that you had these conversations with Mr. Dwyer?

“A. Before I went to take the claim.

“Q. Before you went to take the claim?

(Testimony of Mrs. Frances A. Clausen.)

“A. Yes, sir; it was there I made the agreement.

“Q. Where did you get the money, Mrs. Justice, to pay the fee at the time you filed this paper?

“A. Mr. Dwyer gave me the money.

“Q. At the time you filed this first paper? At the time you filed these papers? A. Yes, sir.

“Q. Do you recall what the amount was?

“A. I think it was \$7.50, if I remember right.”

Now, do you remember whether they are the facts or not?

A. Please repeat. I didn't get all of that.

Q. “Q. Who told you that?

“A. Mr. Dwyer told me that that was no agreement, a verbal agreement.

“Q. That a verbal agreement was no agreement?

“A. No, sir.”

Do you remember that question being asked, and that answer made by you?

A. No, sir; I don't remember that. [1216—886]

Q. Well, do you remember whether Mr. Dwyer did tell you that at the present time?

A. He never told me that to my knowledge. I don't remember such a conversation with him at all.

Q. “Q. How long before you went to the land office do you recall that you had these conversations with Mr. Dwyer?

“A. Before I went to take the claim.”

You remember that, do you?

A. I remember there was a good many questions asked me, and I remember, too, that Mr. Ruick told me that I would be indicted if I didn't answer ques-

(Testimony of Mrs. Frances A. Clausen.)

tions about the way that those fellows made me make the statement. They wouldn't allow me to make the statement the way I wanted to make it. They said, "You are evading the truth now, Mrs. Justice; that isn't right," and they had me so worked up that I don't remember how I did answer questions.

Q. "Q. Before you went to take the claim?

"A. Yes, sir; it was there I made the agreement.

"Q. Where did you get the money, Mrs. Justice, to pay the fee at the time you filed this paper?

"A. Mr. Dwyer gave me the money."

Do you remember those questions being asked, and those answers made by you?

A. Yes, sir; and Mr. Dwyer did get all the money for me.

Q. And that that fee was \$7.50 that you paid in the land office? A. Yes.

Q. Now, do you remember now whether Fred. Justice and Guy Wilson went with you to the land office when you paid that \$7.50 and filed the original paper?

A. They were with me some of the time; I can't remember whether they were that particular time or not.

Q. You just tell what you remember, Mrs. Justice. I know it is [1217—887] a long time ago, and in reading these questions over to you I have no other purpose than to show that you did say these things at a previous time. If you don't remember it that way now, why say so, that's all. Now, Mrs. Justice, do you remember how long you were at the land office

(Testimony of Mrs. Frances A. Clausen.)
before you filed this claim?

A. I was there about a week.

Q. Did you stay in line all that time, or did somebody hold the line for you?

A. I had Mrs. Wilson stay in line some of the time for me, because I expected my husband would die any minute, and I didn't dare to leave him alone all the time, and I had her stay some of the time.

Q. There was no impropriety in that whatever, Mrs. Justice. A. No, sir.

Q. Now, do you remember who notified you of the time you were to make your final proof?

A. Why, I got a notice through the mail.

Q. Well, did Mr. Dwyer send you that notice?

A. No, sir; it came through the mail from the land office.

Q. Well, did Mr. Dwyer also notify you?

A. Not that I remember of. He might have. I don't know.

Q. Now, see if this refreshes your recollection. I read from page 403 of the record which I have been reading from:

“Q. How did you know the date on which that final proof would be made?

“A. Mr. Dwyer gave notice.

“Q. Did you have any talk with Dwyer before going up to the land office on the day you made final proof? A. Yes, sir.

“Q. Did you transact any business with him before going to the land office to make final proof? ,

“A. I did, after I went to the land office.”

(Testimony of Mrs. Frances A. Clausen.)

Do you remember that? [1218—888]

A. I remember talking with him the day I went to the land office.

Q. Now, what happened when you went there to make your final proof? You met him at the land office, did you not?

A. Why, I got the money of him that I had asked him to furnish me to pay.

Q. And do you remember where he gave you that money?

A. Well, I don't remember; somewhere around the building; I can't remember just where.

Q. Now, do you remember how much Mr. Dwyer gave you the day you made your final proof?

A. \$500.00, I guess it was; I don't remember; I can't remember the exact amount now. It has been so long ago I have forgotten.

Q. And do you remember whether he gave you that in Mr. Smith's office? A. I don't remember.

Q. Now, see if this refreshes your recollection a little: Do you remember that he gave you the money with which to make the final proof, and that there was \$6.00 too much, and you took that back to him?

A. Yes, sir.

Q. And then he also gave you some money for a location fee? A. Yes, sir.

Q. Now, how much was that he gave you for a location fee?

A. I was to give him \$100.00 for locating me.

Q. And he handed you a hundred dollar bill, did he not? A. I guess so; I don't remember now.

(Testimony of Mrs. Frances A. Clausen.)

Q. And you handed it back to him; is that correct?

A. I don't remember.

Q. Now, see if this refreshes your recollection:

"Q. State whether or not the amount he (Dwyer) gave you was sufficient to pay for the land?

"A. Yes, sir; it was more than sufficient, \$6.00 more.

"Q. What did you do with the \$6.00? [1219—889]

"A. I gave it back to him.

"Q. Who was in the office at the time he gave you this money? A. Fred. Justice and Guy Wilson.

"Q. In what part of the office did he give you this money, if you remember?

"A. In I. N. Smith's office; I don't remember; it was in the main office.

"Q. In what form was the money, if you recall, bills or gold or silver?

"A. It was gold, some of it, \$100.00 was in bills. I remember there was a hundred dollar bill for locating."

Do you remember that?

A. I don't remember now.

Q. Do you remember whether those questions were asked you, and those answers made by you?

A. I don't remember the questions that was asked at the time. It is too long to remember.

Q. And you signed a note at that time, did you not?

A. Yes, sir; I gave a note for the money.

Q. Do you remember to whom the note ran?

A. To the bank.

Q. To the Lewiston National Bank?

(Testimony of Mrs. Frances A. Clausen.)

A. I don't know which bank by the name. I don't know which bank; it was to the bank, anyway.

Q. Now, you took the money that Mr. Dwyer gave you and made your final proof with it, did you?

A. Yes, sir.

Q. And do you remember having any discussion with Mr. Dwyer as to where you should say you had gotten that money? A. No, sir; I don't.

Q. And I understood that Mr. Guy Wilson and your son went to the land office with you when you made your proof? [1220—890]

A. I think they did.

Q. Now, do you remember where you told them you got that money, when they asked you at the land office where you received it, and how long you had had it?

A. I remember what I said to the land office; yes, sir.

Q. What did you say?

A. I said that I had raised fruit for it, for I intended to take the crop of fruit and pay that back, at the time.

Q. And that you had had it in your possession one month; is that correct? A. I don't remember.

Q. I will read Question 17 of the cross-examination on final proof: "Where did you get the money with which to pay for this land, and how long have you had the same in your actual possession?"

"Answer. Sold fruit. One month in my possession." And you say you understood, as you were going to pay this money back when you sold your

(Testimony of Mrs. Frances A. Clausen.)

fruit, why that would be answering that properly? That was your understanding, was it not?

A. Yes, sir; I supposed that would be all right. I didn't suppose it made any difference where I got the money.

Q. And did you talk that over with anybody?

A. I didn't want it known that I had borrowed money again, because I had such a mortgage on my place.

Q. Now, do you remember these questions being asked you: I read from the same record, the trial of Kester, Kettenbach and Dwyer, at page 407:

“Q. Do you remember whether or not your witnesses were there at the same time that you made your final proof? A. Yes, sir.

“Q. They were? Where was Mr. Dwyer?

“A. He sat at the table with me at my right, and Mr. Bliss on my left. [1221—891]

“Q. What part did Mr. Dwyer take in the proceedings?

“A. Well, when I didn't know how to answer the questions, he prompted me.

“Q. I will ask you if before going to make your final proof you had a talk over these matters with any person as to how you should answer these questions or any of them? A. Yes, sir.

“Q. Do you recall when and where and how long before you made your final proof?

“A. I was—I don't remember how long before it was—Mr. Dwyer had a blank, and he told me the question and how to answer it.

(Testimony of Mrs. Frances A. Clausen.)

“Q. Where was this?

“A. At his home or at my home.

“Q. You say he had a blank with him?

“A. I think he had a blank. He told me what the questions were and told me how to answer, and I wouldn't be positive about the blank.”

Do you remember those questions being asked, and those answers made by you?

Mr. TANNAHILL.—We object in relation to the final proof, upon the ground that it is irrelevant and immaterial.

Mr. GORDON.—Now, just answer whether you remember those questions being asked you, and those answers made by you.

A. Yes, sir. I remember of asking Mr. Dwyer what questions would be asked me at the land office, for I had never been to an office and I didn't know what questions would be asked, and I asked him what questions they would ask me, and he told me some of the questions that would be asked.

Q. Now, do you remember this question being asked you:

“Q. Now, I will read from this final proof of yours, Question 13. ‘Have you sold or transferred your claim to this land since making your sworn statement, or have you directly or indirectly made any agreement or contract in any way or manner with any person whomsoever, by which [1222—892] the title which you may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except yourself?’ Now, that part of it

(Testimony of Mrs. Frances A. Clausen.)

which reads, 'Or have you directly or indirectly made any agreement or contract,' etc. To that you answered no, in the land office. Now, was that answer made by you true or untrue at the time it was made?

"A. Untrue.

"Q. Did you know it was untrue?

"A. Yes, sir."

Q. Do you remember whether those questions were asked you, and those answers were made by you?

A. I don't remember those questions.

Q. You would not say that they were not asked you, and that you didn't make the answers?

A. I would say I don't remember them.

Q. Now, Mrs. Justice, you delivered this note that you made the date of final proof to Mr. Dwyer, did you not, as soon as you made it? A. The note?

Q. Yes.

A. Yes, sir. He got the money for me and I made out the note.

Q. Well, just answer yes or no about that.

A. Well, yes, sir, then.

Mr. TANNAHILL.—And you can make any explanation, Mrs. Justice, that you want to.

WITNESS.—He got the money for me and I made out the note so that he would be safe about borrowing the money for me.

Mr. GORDON.—Q. And then, did he give you any other money that day, later in the day?

A. No, sir; not that I remember of.

Q. When did he give you the \$150.00, or the money

(Testimony of Mrs. Frances A. Clausen.)

that you got? Wasn't that the same day?

[1223—893]

A. No, sir.

Q. How long afterwards was it?

A. I sold my claim to Mrs. Dwyer, and I got my money then.

Q. Now, the same day that you made your final proof, didn't Mr. Dwyer give you \$150.00, and you went to the Lewiston National Bank and called for your note and they gave it to you?

A. I can't remember. I went and got my note, because I had made out a contract to secure that money.

Q. And they turned the note back to you?

A. Yes, sir.

Q. Now, don't you remember that that was the day that you made your proof?

A. I can't remember now.

Q. And who gave you your note at the bank.

A. I don't know, because I didn't know anyone in the bank.

Q. And you didn't pay any money there? You just went there and demanded your note; was that it?

A. I demanded my note.

Q. I say, you didn't pay any money for it?

A. No, sir.

Q. Now, I will ask you if you remember this question being asked you, and this answer made by you:

“Q. How did you come to make that answer in that way?” Referring to the question that I had read before. “What explanation have you to give?

(Testimony of Mrs. Frances A. Clausen.)

“A. Well, that it would be all right to answer the questions that way, being only a verbal agreement, a verbal contract.”

Do you remember whether that question was asked you, and that answer made by you?

A. I don't remember.

Q. “Q. Who told you that?

“A. Mr. Dwyer. [1224—894]

“Q. Now, this Question No. 14, ‘Do you make this entry in good faith for the appropriation of the land, exclusively to your own use, and not for the use of any other person?’ To that you answered yes. Was that answer true or untrue at the time it was made? A. Not exactly true.

“Q. Not exactly true? How did you come to answer that question in that way that you made the entry in good faith for the appropriation of the land exclusively to your own use?

“A. Well, money that I would get for the land would be to my benefit.”

Do you remember those questions being asked you and those answers made by you?

A. I remember some of them. The money would be to my benefit. I don't remember all of it.

Q. And that is practically as you understood the transaction all the way through?

A. Yes, sir; it would be to my benefit to have the claim and sell it and get the money, and I needed the money pretty bad at the time, too.

Q. I will ask you whether you remember this ques-

(Testimony of Mrs. Frances A. Clausen.)

tion being asked you, and this answer being made by you:

“Q. Yes; who told you that it would?

“A. Mr. Dwyer told me that it would be to my benefit.”

Do you remember that question being asked, and that answer made by you?

A. I don't remember it in that way. We talked it over, about how much it would bring, and it would be a benefit to me, I thought, to have that much even out of the claim. I can tell you even \$100.00 at that time would have been more than \$2,000.00 to me to-day, for my husband was sick, and I needed money pretty bad.

Q. Now, do you remember this question being asked you, and this answer being made by you:

[1225—895]

“Q. Now, Question 16 of your cross-examination reads, Mrs. Justice, ‘Did you pay, out of your own individual funds, all the expenses in connection with making this filing, and do you expect to pay for the land with your own money?’ Now, the first part of the question, ‘Did you pay out of your own individual funds all of the expenses in connection with the making of this filing?’ You answered, ‘I did’; was that true or untrue at the time it was made?

“A. Untrue.”

Do you remember that question being asked you, and that answer being made by you? A. No, sir.

Q. You don't remember that, do you?

A. No, sir.

(Testimony of Mrs. Frances A. Clausen.)

Q. Reading from the same record, I will ask you whether this question was asked you, and whether you made this answer:

“Q. And the other part of the question, ‘Do you expect to pay for the land with your own money?’ Your answer to that, ‘I do’; was that true or untrue?

“A. Well, in one way true, and in another way untrue. I gave a note for the money.

“How did you come to make that entry?

“A. I was told to answer the questions that way.

“Q. By whom? A. Mr. Dwyer.”

Q. Do you remember those questions being asked you, and those answers being made by you?

A. No, sir; I don't remember that.

Q. You would not say that you did not make those replies?

A. I wouldn't say I didn't, for I don't remember.

Q. “Q. Question 17, ‘Where did you get the money with which to pay for this land, and how long have you had same in your actual possession?’ To that part of the question reading, ‘Where did you get [1226—896] the money with which to pay for this land?’ you answered ‘sold fruit.’ How did you come to answer that question in that way?

“A. I thought it wouldn't matter where I got the money. I was told it didn't matter where I got the money so I had it.

“Q. That you sold fruit, was that true or untrue?

“A. That was untrue.”

Do you remember that question being asked?

A. Yes, sir.

(Testimony of Mrs. Frances A. Clausen.)

Q. And those answers being made by you?

A. Yes, sir.

Q. And that is as you stated it and as you remember it?

A. Yes, sir; but at the time I expected to sell fruit and pay it, and I didn't think it made any difference about it. That was my intention.

Q. Now, see if this refreshes your recollection: I read from page 412 of the record of the trial I have heretofore referred to:

“Q. Now, Mrs. Justice, when did you get your final receipt and certificate out of the land office?

“A. The day I proved up.

“Q. What did you do with that receipt when you got it?

“A. Why, I made out a contract or deed to secure the money that I had had, and I handed over the final receipt to Mr. Dwyer.”

Do you remember that?

A. Yes, sir.

Q. And that was the fact, was it?

A. Yes, sir. I thought as long as I had the money that they should have the receipt and all, that that would be secure.

Q. “Q. What did I understand you to say?

“A. When I made out the deed or contract, whichever it was, after I had proved up I handed the final receipt over to Mr. Dwyer.”

You have already answered that. That is correct, is it? A. Yes, sir. [1227—897]

Q. And do you remember of your husband coming in the same day; that you sent for him and he came

(Testimony of Mrs. Frances A. Clausen.)

in and signed the same deed or contract at Otto Kettenbach's office, the day you made your proof?

A. Yes, sir.

Q. Now, do you remember whether Mr. Dwyer was there in the next room at the time you signed that?

A. I don't know whether he was in the next room or where he was.

Q. Now, does that refresh your recollection as to whether or not you received \$150.00 at the time you signed that paper?

A. No, sir; I don't remember.

Q. I will read again, continuing from where I have been reading:

"Q. Now, when you signed this paper,"—that is referring to the deed or contract you have been talking about—"what, if anything, did you receive there?

"A. I received \$150.00.

"Q. When next did you see, when did you see this note that you had signed in the morning of that day, earlier in the day?

"A. After I signed that paper.

"Q. Where did you get the note?

"A. I went over to the bank and got it. The Lewiston National Bank."

Do you remember the question being asked, and that answer being made by you?

A. I went over to the bank and got the note.

Q. "Q. How did you happen to go to the Lewiston National Bank to get it?"

A. I believe I answered that.

Q. "A. Because it was in the bank.

(Testimony of Mrs. Frances A. Clausen.)

“Q. How did you know it was in the bank?

“A. Mr. Dwyer had told me it was in the bank.”

That is correct, is it? A. Yes, sir. [1228—898]

Q. “Q. Did you get any written order from Dwyer to get this note? A. No, sir.”

Do you remember that? A. No, sir.

Q. “Q. Who went with you to the bank?

“A. My daughter, Mrs. Wilson.”

Do you remember that question? A. Yes, sir.

Q. And you said you were not acquainted with anybody at the bank?

A. No, sir; I had never met one of the bank officials at that time.

Q. And you asked for your note and they gave it to you; is that correct? A. Yes, sir.

Q. And did Mrs. Wilson get Guy Wilson’s note at that time, do you remember? A. Yes, sir.

Q. And she didn’t make any demand, either, when she got her note; they just handed it to her on her request; that’s correct, is it?

A. I don’t know. I didn’t pay any attention to what she said to them. That was her affair.

Q. Now, this final receipt that you handed over to Mr. Dwyer the day that you made your proof and signed this deed or contract, or whatever it was, did you get that receipt back again?

A. I could have had it back any time I wanted it.

Q. Well, didn’t you get it back?

A. Yes, sir, I got it back, and got my patent.

Q. Now, where did you get it from?

A. The receipt?

Q. Yes.

(Testimony of Mrs. Frances A. Clausen.)

A. I asked Mr. Dwyer for the receipt to get my patent. I had [1229—899] left it in security with the contract for the—

Q. Now, just about the time that O'Fallon and Goodwin came there, don't you remember that you had a talk with Mr. Dwyer, and told him that you had made them a statement, and then he said something about you had better have your final receipt?

A. No, sir; he never told me I had better have it.

Q. Now, do you remember these questions being asked you, at the trial which I have been referring to, page 415:

“Q. What was said there about it by Dwyer, about the matter relating to the conversation there?

“A. I told him that Mr. O'Fallon and another man had come there and asked for a statement, and he said I didn't need to give the statement to anyone in regard to their timber business.

“Q. Who said that? A. Mr. Dwyer.”

Do you remember that question being asked you, and that answer being made by you? A. Yes, sir.

Q. And that was true, was it?

A. Yes, sir, that was true.

Q. The next question:

“Q. Go right along and give the rest of the conversation.

“A. I told him I had given the statement to them, and that they wanted my final receipt, but I didn't have it and he said I could have the final receipt again, and I afterward got it.

“Q. What did Dwyer say, if anything, at that time as to the whereabouts of that receipt?

(Testimony of Mrs. Frances A. Clausen.)

“A. He said they were in the bank.

“Q. Did he mention any bank?

“A. Lewiston National Bank.

“Q. State if you did afterwards get the receipt.

“A. I did. [1230—900]

“Q. Where did you get it?

“A. Well, I am not positive whether I got it of Mr. Dwyer or at the bank, but I think I got it out of the bank.

“Q. About how long after this first visit from Mr. O’Fallon and Mr. Goodwin?

“A. It was not very many days, but I can’t remember the length of time.

“Q. Did you finally deliver up that receipt later?

“A. Yes, sir.

“Q. To whom?

“A. Well, afterwards I made a deed.

“Q. To whom did you deliver the receipt?

“A. Well, I gave the receipt, when I made out the deed; when I made the deed to Mrs. Dwyer for my timber claim, I gave her the receipt then.

And your idea of the transaction now is practically as you stated as I have read it here, is it?

A. Yes.

Q. I say practically; I don’t expect you to remember every word that you said.

A. I don’t, either.

Q. Now, you say you sold your claim to Mrs. Kittie E. Dwyer? A. Yes, sir.

Q. Now, state the circumstances of making that, or the transaction relative to selling that claim.

(Testimony of Mrs. Frances A. Clausen.)

A. Why, she wanted to buy the claim, and I came over to Lewiston and sold it to her.

Q. Now, state how she—state what she said.

A. Oh, I can't remember what was said.

Q. Well, tell it as near as you can.

A. Well, she wanted to buy my claim, and I sold it to her.

Q. Well, did she call you up by telephone and ask you if you [1231—901] wanted to sell it?

A. Yes, sir.

Q. Well, what did you tell her?

A. I told her I would like to sell it.

Q. And what happened next?

A. Why, I sold the claim.

Q. Did you have an arrangement with her over the telephone as to how much you were to get for it?

A. No, sir. I don't talk my business over the telephone.

Q. Well, now, you won't tell me how you did talk, so I was trying to see if I could draw it out from you.

A. I came over to Lewiston and talked with her about selling it, and went to an office and made out a deed. Now, I don't know what office it was, either.

Q. Now, was that all done the same day?

A. Yes, sir.

Q. And how long was that after you made your proof?

A. Well, sir, I can't tell what day of the month or year that that deed was made.

Q. Oh, I know, but couldn't you tell whether it was

(Testimony of Mrs. Frances A. Clausen.)

two days or a week, or six months, or longer than that?

A. No, sir, I can't tell how long. Perhaps the deed would show. [1232—902]

Mr. GORDON.—Q. Now, who was present—where did you make the deed to Mrs. Dwyer, Mrs. Clausen?

A. I told you I didn't know the man that made out the deed, or the office; I have forgotten it. It will tell on the deed the man's name, but I can't tell you.

Q. Now, was that the first deed you made, or was that the second?

A. That was the first deed that I made.

Q. And the other, you didn't know whether that was a contract or a deed?

A. I supposed it to be a contract to secure the money.

Q. And when you made this second affair, whether it was a deed, or whatever it was, did you receive any more money?

A. Yes, sir, I received my money then.

Q. How much did you receive?

A. Well, I have forgotten the amount of money at that time; it was over \$1,000.00, and I paid back to the bank the money that I had kept, the balance. I have forgotten what I paid on the claim.

Q. Was this paid you by Mrs. Kittie Dwyer's check, or how? A. Yes, sir.

Q. Then, she gave it all to you in one check, did she?

A. She gave me a check and I got it cashed at the

(Testimony of Mrs. Frances A. Clausen.)

bank, and then I put back the amount of the money to the bank that I had borrowed, that I had had, all the expenses and everything, and the balance I kept.

Q. That was the day you made the deed to Mrs. Dwyer, was it? A. Yes, sir.

Q. And you got that money after cashing the check she gave you? A. Yes, sir.

Q. They took out the amount for taxes, did they not, at that time?

A. Yes, sir, they took out the amount for taxes.

Q. That was about \$17.00, was it not?
[1233—903]

A. I can't remember,—seventeen and something; I don't remember just how much it was. I never try to remember all those little details. If I ever have anything to do with the Government again I will carry a little book and write down every word I say so I can give the evidence straight.

Q. Wasn't this in Mr. Dwyer's office that you made this deed? A. No, sir, it was not.

Q. Now, was there any talk with you and Mr. and Mrs. Dwyer at the time you made this second paper that you have referred to about the first paper being recorded?

A. I don't remember any such talk.

Q. Now, I will read from the same record, at page 418. From the context, they have been inquiring about that first paper that you called a deed or contract. "Question. What did Dwyer say about it never having been put on record?" "Answer. He didn't say anything about it; he didn't say anything

(Testimony of Mrs. Frances A. Clausen.)

about it not being on record.” “Question. What did you say about it not being on record?” “Answer. I said it never was on record, and so I made another deed.” “Question. How did you know it never was on record? How did you learn it never was on record?” “Answer. I said to Mrs. Dwyer, I don’t know how I could make out a deed if it was on record, but it wasn’t on record.” “Question. How did you know it wasn’t on record?” “Answer. Well, they said it was not on record.” “Question. That is what I want to know. He said it was not on record?” “Answer. I can’t remember whether it was Mr. or Mrs. Dwyer.” “Question. It was in the presence of Mr. Dwyer?” “Answer. Yes, it was in his presence, if it was in his office.” “Question. Did they give you back the first paper?” “Answer. No, I never had the first paper back.” “Question. Did they offer to give it back to you?” “Answer. Mrs. Dwyer said she would give it back to me, but I never went after it.” “Question. Did Mr. Dwyer draw up the deed, or did you go to this other office to have the [1234—904] deed drawn up?” “Answer. I went to the other office to have the deed drawn up, and I paid the taxes on the timber claim and made out the deed.” “Question. How much taxes did you pay?” “Answer. Seventeen dollars and something.” “Question. Where did you get the money to pay the taxes?” “Answer. They took it out of the money I was to get for the claim there in making the second deed.” “Question. They held out seventeen dollars?” “Answer. Yes, sir.” Do you re-

(Testimony of Mrs. Frances A. Clausen.)

member those questions being asked you and those answers made by you?

A. I never answered in that way, I know, about the second deed; I never said I had a first deed.

Q. Do I understand then that this record that I have read from misquotes you?

A. Well, I don't remember saying any such thing that there was a second deed, for I never called it a second deed.

Q. Would you say you didn't make those statements?

A. No, I wouldn't say I didn't. The deed I made to Mrs. Dwyer was the first deed. If the first was a deed, that paper, I didn't know it; I supposed it was a contract.

Q. Now, I continue to read the next question and ask you whether or not this question was asked you and whether or not you made the answer which I shall read: "Question. What amount did they pay you at the time you executed the deed?" Answer. The second deed called for \$950.00, if I remember right the amount." Do you remember that question being asked you and that answer made by you?

A. I don't remember how much the amount was. It might have been asked; I don't remember.

Q. Now, that refers to the second deed. That wasn't in the question. I will read the question again: "Question. What amount did they pay you at the time you executed the deed?" "Answer. The second deed called for \$950.00, if I remember right the amount." "Question. I will ask the witness,

(Testimony of Mrs. Frances A. Clausen.)

Mrs. Justice, did I misunderstand, did you or did you not state before that you were getting under the new [1235—905] deed, that you were to get \$75.00 for it? Was I in error? Did you state how much you were to get for the claim?" "Answer. Do you mean the first time or this time?" "Question. Yes, this time?" "Answer. No, not this time." "Question. Then that is my mistake. How much was they to pay you at this time?" "Answer. Well, I got \$75.00 for making out the deed." Is that correct?

A. I don't remember how much it was.

Mr. GORDON.—Now, we will take a little rest, Mrs. Clausen.

WITNESS.—Could you adjourn until after dinner?

Mr. GORDON.—Yes.

WITNESS.—I will come back after dinner.

At this time a recess was taken until one o'clock, at which time the taking of testimony was resumed, with Mrs. Clausen on the witness-stand.

Mr. GORDON.—Mrs. Justice, did I show you this affidavit the other day and ask you if you signed it (showing witness paper)?

A. I believe you did.

Q. I show you affidavit subscribed and sworn to by Frances Justice May 5, 1905, and ask you if that is your signature to that affidavit?

A. That is my signature.

Q. Was Mr. O'Fallon present at the time that that affidavit was signed, was Mr. O'Fallon and Mr. Goodwin present?

A. Was that the one they made out at my house?

(Testimony of Mrs. Frances A. Clausen.)

Q. Yes.

A. Yes, sir, Mr. O'Fallon and Goodwin was there.

Mr. GORDON.—We offer the affidavit in evidence, and read the same into the record.

WITNESS.—They had me scared stiff when I made that affidavit, and I don't know what was in there; they wrote that down and I didn't read it over. [1236—906]

Mr. GORDON.—Q. You signed it, did you?

A. Yes, sir, but I don't know what is in there.

Mr. GORDON.—(Reading:)

[Exhibit No. 35.]

“State of Washington,

County of Asotin,—ss.

I, Frances A. Justice, being of legal age, and first duly sworn, depose and say:

My postoffice address is Clarkston, Washington. I am the identical party who made a timber and stone entry in the Lewiston, Idaho, land district and at the Lewiston Land Office. My son Fred E. Justice, deceased, also made a similar entry at the same time. My claim was in Tp. 38 N. R. 6 E., in Section 19, and contained about 120 acres, more or less.

I was located by William Dwyer of Clarkston, Washington, and paid him \$100.00 for locating me. This money was paid to him in Lewiston, Idaho, two days before final proof was made. I went over the land with Mr. Dwyer, and several other parties located claims at the same time, among whom were Eugene Hopper and my husband; and Mrs. White, Miss Elizabeth Kettenbach, Edward O'Brien, (who

did not take a claim), Geo. H. Kester and wife, of Lewiston, Idaho. I did not pay any of the expenses of the trip. We left Lewiston October 9, 1903. I understood Mr. Dwyer paid the expenses of the trip.

I made my entry at Lewiston, Idaho, on April 25, 1904, a line having been formed at the land office there about a week before my entry was made. The parties who went with me to examine lands were in the line and made entries, except Mr. O'Brien and my husband.

The location fee I paid William Dwyer was returned to me by Mr. Dwyer. I did not give him a note for the money. The location fee was returned to me when I received the money to offer final proof.

The Four hundred Dollars I used to make final proof was handed me by William Dwyer probably two hours before I went up to the land [1237—907] office to make final proof. I gave the note to Geo. H. Kester at the time I got the money from Mr. Dwyer. The note was handed into the bank, but I cannot recall in whose favor the note was made. I wanted to borrow the money and Mr. Dwyer told me where he could get the money for me. At the time he brought the money to me, that is, the Four Hundred Dollars, he brought the note for me to sign and I signed it; and I supposed at the time I was borrowing the money from the Lewiston National Bank. I cannot recall the exact amount of the note, or the money received, but I received enough money to pay Mr. Dwyer his \$100.00 location fee and for the land and had (\$6.00) Six Dollars left, which I returned to Mr. Dwyer after *after* making final proof.

I signed what I understood was a contract, that

is, an instrument of writing, conveying the land I proved up on to the Kester & Kettenbach in the bank, the same day I made final proof and after making final proof. Just after I signed the instrument of writing spoken of William Dwyer handed me One hundred and Fifty Dollars (\$150.00) in cash. Mr. Dwyer handed me the money in the hall of the building where the Notary Public took the acknowledgment. The same day, and after executing the aforesaid instrument of writing I returned to the Lewiston National Bank and demanded the return of the aforesaid note. The note was returned by Geo. H. Kester. I took the note and destroyed it.

Before going out to examine the land I had a talk with Mr. Dwyer and told him I would take a claim if I knew where I could sell it when I proved up. He said he thought he knew where he could find a purchaser, and he told me these parties would not pay over One hundred & Fifty Dollars and the expenses of the location. I went up to examine the claim with the intention of selling or disposing of my claim to the purchaser spoken of by Mr. Dwyer.

I understood the instrument in writing above spoken of was a contract or agreement that I would execute a deed for the land when I should get my patent, as I did not think I could execute a deed until I received my patent.

FRANCES JUSTICE. [1238—908]

Subscribed and sworn to before me this 5th day of May, 1905.

FRANCIS M. GOODWIN,

Spl. Agt. G. L. O."

(Testimony of Mrs. Frances A. Clausen.)

The said above affidavit was thereupon marked by the stenographer as Exhibit 35.

Mr. TANNAHILL.—The affidavit just offered in evidence is objected to on the ground that it is irrelevant, incompetent and immaterial, as the witness states that it was made under duress and threats and menace, and that the affidavit is also untrue, and an effort by the Government to contradict its own witness. [1239—909]

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mrs. Clausen, will you state in what way you was treated when Mr. Goodwin and Mr. O'Fallon had you sign this affidavit, what they did, and what they said to you, as well as you can remember?

A. Why, they came there to the house—shall I state it just from the start as it was?

Q. Yes.

A. They came there to the house and wanted to know if I was alone, and said they was sent there by the Government to get a deposition from me, and they went and looked in every room in the house to see whether there was anyone in the house that could hear it, and they asked me questions, and whenever I would try to tell how it was Mr. O'Fallon said, "Look out, Mrs. Justice, you are evading the truth; we know just how that was and you are not telling it as it was."

Q. Did he tell you how it was?

A. Yes, he would tell how it was, and would say, "That is the way it is." And the next question he

(Testimony of Mrs. Frances A. Clausen.)

would ask, it was the same way, "Now, look out; you are evading the truth. We have found out all about this; we know there was a prior agreement, and you was to get \$150.00," and all that sort of bosh, and wouldn't let me tell it how it was. I went to see a lawyer about this, and found out about it, and he told me to go on the stand and tell my story the way it was, that I had a right, that I was a free-born citizen, and that I had a right to tell my story and not be bluffed into telling things that wasn't so.

Q. I will read over this affidavit, Mrs. Clausen, and you listen to it so that you will be able to tell me what part of it is true and what part of it isn't true. (Reading:) "My postoffice address is Clarkston, Washington. I am the identical party who made a timber and stone entry in the Lewiston, Idaho, land district, and at the Lewiston land office. My son Fred E. Justice, deceased, also made a similar entry at the same time. My claim was in township 38 north, range 6 east [1240—910] in section 19, and contained about 120 acres, more or less." Now, is the description of the land that is in that affidavit something that you gave them, or was it something they put down themselves?

A. They asked me how much it was, and I told them I wasn't sure about it, and they said they had found out it was less than a quarter section, they knew how much it was, and they marked it down, because I didn't remember.

Q. (Reading:) "I was located by William Dwyer, of Clarkston, Washington, and paid him

(Testimony of Mrs. Frances A. Clausen.)

\$100.00 for locating me. This money was paid to him in Lewiston, Idaho, two days before final proof was made." Do you remember of stating that to them, that the location fee was paid before you made final proof?

A. No, I don't remember about that.

Q. What was the fact about that?

A. I got the money the day I made proof.

Q. And paid the location fee that day?

A. Yes.

Q. (Reading:) "I went over the land with Mr. Dwyer, and several other parties located claims at the same time, among whom were Eugene Hopper and my husband, and Mrs. White, Miss Elizabeth Kettenbach, Edward O'Brien, who did not take a claim, George H. Kester and wife, of Lewiston, Idaho. I did not pay any of the expenses of the trip. We left Lewiston October 9, 1903. I understood Mr. Dwyer paid the expenses of the trip. I made my entry at Lewiston, Idaho, on April 25, 1904, a line having been formed at the land office there about a week before my entry was made. The parties who went with me to examine lands were in the line and made entries, except Mr. O'Brien and my husband. The location fee I paid William Dwyer was returned to me by Mr. Dwyer. I did not give him a note for the money. The location fee was returned to me when I received the money to offer final proof." Now, do you remember of every saying that after you paid Mr. Dwyer he returned the location fee to you? [1241—911]

(Testimony of Mrs. Frances A. Clausen.)

A. I don't remember any such thing.

Q. That is not a fact, is it?

A. No, sir, and Mr. Kester and Mrs. White and those didn't go to the claim at the time I did, but I met them when I was coming home; they were going up when I was coming home, they were going up when I was coming home. They didn't go with me; I met them going when I came back.

Q. And did you tell Mr. Goodwin and Mr. O'Fallon that was the way of it?

A. Yes, sir, I told them I met them on the way going up.

Q. Then, the way they put it in your affidavit, that they went with you, is not true? A. No, sir.

Q. (Reading:) "The four hundred dollars I used to make final proof was handed me by William Dwyer probably two hours before I went up to the land office to make final proof. I gave the note to George H. Kester at the time I got the money from Mr. Dwyer, The note was handed into the bank, but I cannot recall in whose favor the note was made. I wanted to borrow the money and Mr. Dwyer told me where (when) he could get the money for me. At the time he brought the money to me, that is, the four hundred dollars, he brought the note for me to sign, and I signed it, and I supposed at the time I was borrowing the money from the Lewiston National Bank. I cannot recall the exact amount of the note or the money received, but I received enough money to pay Mr. Dwyer his \$100.00 location fee and for the land and had \$6.00 left, which I returned to Mr. Dwyer

(Testimony of Mrs. Frances A. Clausen.)

after making final proof. I signed what I understood was a contract, that is, an instrument in writing, conveying the land I proved up on to the Kester and Kettenbach in the bank the same day I made final proof and after making final proof. Just after I signed the instrument in writing spoken of William Dwyer handed me \$150.00 in cash.” Now, did you tell Mr. Goodwin and Mr. O’Fallon that you conveyed this land to Kester and Kettenbach?
[1242—912]

A. I did not.

Q. And the affidavit in regard to that is not true?

A. No, it is not.

Q. You told them you gave them a contract securing the money you borrowed?

A. I told them I gave a contract to secure the money that I borrowed, and I didn’t give a note to Mr. Kester; I didn’t know Mr. Kester at the time. I gave the note,—the note was made out to Mr. Dwyer, and I had never met Mr. Kester at that time.

Q. (Reading:) “Mr. Dwyer handed me the money in the hall of the building where the notary public took the acknowledgment. The same day, and after executing the aforesaid instrument of writing, I returned to the Lewiston National Bank and demanded the return of the aforesaid note. The note was returned by George H. Kester. I took the note and destroyed it.” Do you remember what you told them in regard to that?

A. I told them I didn’t know who it was gave me the note. I know none of the men in the bank and

(Testimony of Mrs. Frances A. Clausen.)

I don't know which one handed me the note.

Q. (Reading:) "Before going out to examine the land I had a talk with Mr. Dwyer and told him I would take a claim if I knew where I could sell it when I proved up. He said he thought he knew where he could find a purchaser, and he told me those parties would not pay over \$150.00 and the expenses of the location. I went up to examine the claim with the intention of selling or disposing of my claim to the purchaser spoken of by Mr. Dwyer." Did you tell them anything like that?

A. No, I did not.

Q. And that part of that affidavit isn't true?

A. No, sir, it is not.

Q. (Reading:) "I understood the instrument in writing above spoken of was a contract or agreement that I would execute a deed for the land when I should get my patent, as I did not think I could execute a deed until I received my patent." Did you tell them anything like that? [1243—913]

A. No, sir; I did not, for I didn't know who I would sell it to. I told them that I had secured the money that I got.

Q. Then, you had no agreement with Mr. Dwyer or anyone else to sell the land before you made final proof? A. I had no agreement.

Q. Do you remember of telling Mr. Dwyer before, or about the time you made final proof that you needed some money, and that you wouldn't be able to hold your land very long, that you would like to sell it as soon as you could? A. Yes, sir.

(Testimony of Mrs. Frances A. Clausen.)

Q. Do you remember of telling Mr. Dwyer, about the time you made final proof, or directly afterwards, that your husband was sick and that you needed some money and would like to get \$150.00, or something of that kind?

A. Yes, sir, I needed money just as bad as a body could need it at the time he was sick; I was in debt so heavy and no money on hand, and I needed money very badly.

Q. And Mr. Dwyer told you he would try to get you some money and add it to the other money and take security on the claim, something like that?

A. Something like that; I don't remember just how it was worded.

Q. But anyway you got the \$150.00, Mr. Dwyer got the \$150.00 for you, and you signed some kind of an instrument, which you understood was giving security on the claim for the entire amount, a contract or something which made the claim security for the amount that you had gotten from Mr. Dwyer to make final proof and also included the \$150.00. that is the way you understood it, is it?

A. Well, it was something like that, that he would try to get me some money on it.

Q. Then, after while,—you kept the land something like a year and a half before you finally sold it to Mrs. Dwyer, did you not? [1244—914]

A. I can't remember how long it was that I kept the land; I don't remember.

Q. You kept it until—

A. The deed would tell how long.

(Testimony of Mrs. Frances A. Clausen.)

Q. You kept it until you executed the deed to Mrs. Dwyer? A. Yes.

Q. And you was at liberty to sell it to anyone you pleased in the meantime if you got a buyer who would give you more money for it, would give you a price that was satisfactory to you?

A. I had a right to sell the claim in fifteen minutes after I proved up if I chose to do so.

Q. The only obligation you was under to Mr. Dwyer or anyone else was to return the money you had borrowed from them?

A. That was all the obligation I was under to anybody.

Q. The affidavit you made when you filed your sworn statement, Mrs. Clausen, was to the effect that "I have made no other application under said acts; that I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit, and that I have not, directly or indirectly, made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself." That affidavit was true, was it?

A. It was true; it was not a benefit to anybody but myself, I don't see how it was.

Q. And it was true at the time you made it, and also true at the time you made your final proof?

A. Yes, sir.

(Testimony of Mrs. Frances A. Clausen.)

Q. And it is still true?

A. I never went into it trying to do anything that wasn't just right. [1245—915]

Q. Now, Mrs. Justice, you stated that when Mr. Ruick talked to you, threatened to indict you, that he held a paper in your hands and made you make your evidence conform to that paper he held, that affidavit, I believe you expressed it, that Mr. O'Fallon had you make. I will ask you if that was this affidavit which you have identified, marked Complainant's Exhibit 35?

A. Yes, sir. And he told me that I could be indicted if I didn't give my testimony just like that.

Q. And he told you that if this affidavit was false that you could be indicted for it? A. Yes, sir.

Q. And that if you didn't give your evidence just like this affidavit that you could be indicted?

A. Yes, sir; he had me frightened so I didn't know who I was or what my name was for awhile. He kept me there two days talking to me like that.

Q. Now, when Mr. O'Fallon and Mr. Goodwin came over to your house there, how long was that after your husband had died?

A. It was just after my son died a short time, and I was pretty near wild anyway; my husband died, and then in two months my son was killed on the wire.

Mr. TANNAHILL.—That is all.

Redirect Examination.

(By Mr. GORDON.)

Q. Mrs. Justice, you remember testifying at Mos-

(Testimony of Mrs. Frances A. Clausen.)

cow in November, 1906, at the trial of William Dwyer for subornation of perjury, do you not?

Mr. TANNAHILL.—The first trial at Moscow. She will understand that better.

Mr. GORDON.—Q. You remember testifying at that trial, do you? [1246—916]

A. I wasn't at the first trial at Moscow.

Q. That was Mr. Robnett's trial, but I mean the first trial of Mr. Dwyer.

A. I think I was at the first trial of Mr. Dwyer.

Q. I will ask these few questions, and then I will be through. Do you remember whether or not you were asked the questions which I shall read? I read from the record in case 1606, referred to in the stipulation, page 232: "Question. That is all I am asking for, Mrs. Justice, to state what the arrangement, if any was between you and Mr. Dwyer, what was said, what was the agreement, if any?" "Answer. Well, I was to go and take the claim." "The Court. Well, was that all that was said? You were just to take the claim?" "Answer. Well, no; I was to receive a certain amount for the claim." "Question. For what?" "Answer. For the timber claim." "Question. You were to receive a certain amount for the timber claim?" "Answer. Yes, sir." "Question. What were you to receive for the timber claim?" "Answer. \$150.00." "Question. Through whom were you to receive this \$150.00?" "Answer. Well, Mr. Dwyer got the money for me, and I made a contract of that timber after proving up on it." "Question. You made a contract as to what you

(Testimony of Mrs. Frances A. Clausen.)

would do on the timber after you proved up on it?"

"Answer. I never made the contract, only a verbal contract before I proved up on the timber." "Ques-

tion. That is it, that is just what I want to know.

Now, what was the verbal contract, between you and Mr. Dwyer before you went up there to the timber?"

"Answer. That I would accept \$150.00 for my share in the claim." "Question. For your right?" "An-

swer. For my right." "Question. For your timber

right?" "Answer. Yes, sir." "Question. Were

you to be to any expense in the matter?" "Answer.

I was to have \$150.00 clear of all expenses." "Ques-

tion. Did you have this arrangement with Mr.

Dwyer before you went up to look at the timber?"

"Answer. I did." Do you remember those ques-
tions being asked you and whether you made those
answers to them? [1247—917]

A. I remember some of them.

Q. And the others you don't? A. No, sir.

Q. Will you say whether or not your answers
that you remember were true or not?

A. They were not true, but they were just as I was
compelled to answer them.

Mr. GORDON.—That is all.

Recross-examination.

(By Mr. TANNAHILL.)

Q. Now, Mrs. Justice, regardless of what you
was compelled to answer over there, and regardless
of any answer you may have made or any statement
you made in the affidavit for Mr. Goodwin and Mr.
O'Fallon, and regardless of anything you might have

(Testimony of Mrs. Frances A. Clausen.)

testified to either in the trial of the United States against William Dwyer for subornation of perjury, or the United States against William Dwyer, George H. Kester and William F. Kettenbach, charged with conspiracy, the facts, as you intend to testify to them, and as you say is true, is that you did not have a prior agreement to sell your land, or any agreement with Mr. Dwyer or Mr. Kester or Mr. Kettenbach or anyone else to sell your land before you made final proof?

A. I did not have, and Mr. Kettenbach and Mr. Kester are men that I never met before that, and I didn't have any prior agreement with Mr. Dwyer.

Mr. TANNAHILL.—That is all.

Mr. GORDON.—That is all. Thank you, Mrs. Justice.

WITNESS.—And if I would see Mr. Kettenbach to-day I wouldn't know the man.

Mr. GORDON.—Mr. Tannahill, Monday is a holiday. Shall we adjourn?

Mr. TANNAHILL.—Oh, no. Let's go right ahead. [1248—918]

The SPECIAL EXAMINER.—You are willing to go ahead, are you?

Mr. TANNAHILL.—Yes.

At this time the hearing was adjourned until Monday, September 5th, 1910, at ten o'clock A. M. [1249—919]

On Monday, the 5th day of September, 1910, at ten o'clock A. M., the hearing was resumed.

By agreement of counsel, an adjournment was

taken until to-morrow morning at ten o'clock A. M.
[1250—920]

On Tuesday, the 6th day of September, 1910, at ten o'clock A. M., the hearing was resumed.

**[Stipulation Re Decease, and Offer of Original
Entry Papers of Fred E. Justice et al.]**

Mr. GORDON.—It is stipulated in open court by and between the parties that Fred. E. Justice, who filed timber and stone lands sworn statement No. 1324, is dead.

Mr. GORDON.—We offer in evidence the original land office files, being the timber and stone entry made by Fred. E. Justice, viz.: The timber and stone lands sworn statement made by Fred. E. Justice April 25th, 1904, the nonmineral affidavit of Fred. E. Justice, bearing the same date, the testimony of Fred. E. Justice given at final proof, dated July 13th, 1904, the cross-examination of Fred. E. Justice taken at the same time, the testimony of the witnesses at final proof, and the cross-examination of said witnesses, the receiver's receipt and the register's certificate, dated July 13th, 1904, and a certified copy of the patent issued to Fred. E. Justice, dated December 31st, 1904, all relating to the entry of the east half of the northeast quarter and the east half of the southeast quarter of section 20, in township 38 north, of range 6 east, Boise meridian.

Mr. TANNAHILL.—The defendants severally waive any further identification of the papers, but severally object to the admission of the papers in evidence in support of bills No. 406 and 407, upon the

ground and for the reason that the entry is not involved in either of these two particular actions. And the defendants severally object to the admission of the final proof papers in evidence in support of either of the bills or actions, upon the ground that they are matters referring to the final proof, occurring long after the filing of the sworn statement, and are irrelevant, incompetent and immaterial. [1251—921]

Said documents were thereupon marked by the Reporter, as Exhibits 36, 36A, 36B, 36C, 36D, 36E, 36F, 36G, 36H, 36I, 36J, 36K, 36L, and 36M.

Mr. GORDON.—It is stipulated in open court by and between the parties that Jackson O'Keefe, who filed timber and stone lands sworn statement No. 1330, in the land office at Lewiston, Idaho, is dead.

Mr. GORDON.—We offer in evidence the timber and stone lands sworn statement signed Jackson

April
O'Keefe, dated October 25th, 1904, filed in the land office at Lewiston, Idaho, on that date, the nonmineral affidavit of Jackson O'Keefe, dated April 24th, 1904, the testimony of Jackson O'Keefe given on final proof July 11th, 1904, the cross-examination of Jackson O'Keefe taken at final proof, the testimony of the witnesses at final proof, and the cross-examination of said witnesses, the receiver's receipt and the register's certificate, dated July 11th, 1904, the notice for publication, a certified copy of the patent issued to Jackson O'Keefe, and dated December 31st, 1904, all relating to the entry of the west half of the southeast quarter and the east half of the

southwest quarter of section 23, township 38 north, of range 5 east, Boise meridian.

Mr. TANNAHILL.—The defendants severally waive any further identification of the papers, but object to the admission of any of the papers in evidence in support of bills No. 406 and 407, upon the ground that the entry is not involved in either of those actions, and this evidence is irrelevant and immaterial. And the defendants further object to the admission of the final proof papers in evidence in support of either of the actions, upon the ground that they are matters occurring long after the filing of the sworn statement, and relate strictly to the final proof, and as irrelevant and immaterial.

Said documents were thereupon marked by the Reporter as Exhibits 37, 37A, 37B, 37C, 37D, 37E, 37F, 37G, 37H, 37I, 37J, 37K, 37L, and 37M. [1252—922]

Mr. GORDON.—We offer in evidence the timber and stone lands sworn statement of Joseph B. Clute, dated March 24th, 1903, filed in the land office at Lewiston, Idaho, on March 24th, 1903, the nonmineral affidavit of Joseph B. Clute, bearing the same date, the notice for publication filed the same date, the testimony of Joseph B. Clute given on final proof, dated June 17th, 1903, the cross-examination of Joseph B. Clute given at final proof on the same date, the testimony of the witnesses given at final proof, and the cross-examination of them, the receiver's receipt and the register's certificate, dated June 17th, 1903, said papers being the original land office files, and a certified copy of the patent issued to

Joseph B. Clute, dated August 3d, 1904, all of said papers relating to the entry of the south half of the northeast quarter and the east half of the southeast quarter of section 26, in township 39 north, of range 3 east, Boise meridian. We also offer a certified copy of said last mentioned receiver's receipt, dated June 17th, 1903, recorded in the office of the recorder of Shoshone County at the request of George H. Kester August 10th, 1903. We also offer a certified copy of a deed dated June 17th, 1903, made, executed and acknowledged by Joseph B. Clute, conveying to William F. Kettenbach and George H. Kester, in consideration of \$1,000.00, the south half of the northeast quarter and the east half of the southeast quarter of section 26, township 39 north, of range 3 east, Boise meridian. Said deed is acknowledged before H. K. Barnett, a Notary Public, June 17th, 1903, and recorded in the office of the recorder of Shoshone County at the request of George H. Kester, August 10th, 1903.

Mr. TANNAHILL.—The defendants severally waive any further identification of the papers, but severally object to the admission of any of the papers in evidence in support of bills No. 388 and 407, upon the ground that it is irrelevant and immaterial, the entry not being involved in either of these actions as the bills are amended, and as irrelevant and immaterial. And the defendants severally object to the admission of any of the final proof papers in evidence in support of [1253—923] either of the actions, upon the ground that they are matters relating to the final proof, occurring long after the

filing of the sworn statement, and irrelevant and immaterial.

Said documents were thereupon marked by the Reporter as Exhibits 38, 38A, 38B, 38C, 38D, 38E, 38F, 38G, 38H, 38I, 38J, 38K, 38L, 38M, 38N, 38O, and 38P.

Mr. GORDON.—We offer in evidence the original land office files in the timber and stone entry of William E. Helkenberg, being the timber and stone lands sworn statement of William E. Helkenberg, dated October 26th, 1904, filed in the land office at Lewiston, Idaho, on that date, the nonmineral affidavit of William E. Helkenberg, bearing the same date, the testimony of William E. Helkenberg given at final proof, dated January 20th, 1905, the cross-examination of William E. Helkenberg, dated the same date, the testimony of the witnesses at final proof, and the cross-examination of them, the notice of publication, the receiver's receipt and the register's certificate, dated January 20th, 1905, together with a certified copy of the patent issued to William E. Helkenberg, and dated May 29th, 1907, all relating to the entry of the northwest quarter of the southwest quarter of section 28, and the northeast quarter of the southeast quarter and the southeast quarter of the northeast quarter of section 29, in township 39 north, of range 5 east, Boise meridian.

Mr. TANNAHILL.—The defendants severally waive any further identification of the papers, but severally object to the admission of any of the papers in evidence in support of bills No. 388 and 407, upon the ground that the entry is not involved in

either of these actions, and they are irrelevant and immaterial. The defendants also severally object to the admission of any of the final proof papers in evidence in support of either of the bills, upon the ground and for the reason that they relate strictly to the final proof and occurring long after the filing of the sworn statement, and irrelevant and immaterial.

Said documents were thereupon marked by the Reporter as Exhibits [1254—924] 39, 39A, 39B, 39C, 39D, 39E, 39F, 39G, 39H, 39I, 39J, 39K, 39L, and 39M.

Mr. GORDON.—We offer in evidence the original entry papers filed in the land office at Lewiston, Idaho, relating to the timber and stone land entry of Wren Pierce, being the timber and stone lands sworn statement of Wren Pierce dated March 21st, 1903, filed in the land office at Lewiston, Idaho, on the same date, the notice of publication, dated and filed the same date, the nonmineral affidavit of Wren Pierce, dated March 21st, 1903, and filed the same date, the testimony of Wren Pierce given at final proof, dated June 17th, 1903, the cross-examination of Wren Pierce at final proof, of the same date, the testimony of the witnesses given at final proof, and the cross-examination of them, made at the same time, the receiver's receipt and the register's certificate, dated June 17th, 1903, a certified copy of the patent issued to Wren Pierce, and dated August 3d, 1904, all relating to the entry of the southeast quarter of section 22, in township 39 north, of range 3 east, of Boise meridian. We also offer in evidence

a certified copy of the receiver's receipt last mentioned, dated June 17th, 1903, and recorded in the office of the recorder of Shoshone County, Idaho, at the request of William F. Kettenbach, June 20th, 1903. We also offer in evidence a certified copy of a mortgage made and executed by Wren Pierce and wife May Pierce, June 17th, 1903, to Clarence W. Robnett, conveying the southeast quarter of section 22, in township 39 north, of range 3 east, Boise meridian, to secure a promissory note of even date, made by Wren Pierce and May Pierce, in the sum of \$728.75, payable to the order of Clarence W. Robnett in one year after date, with interest at the rate of one per cent. per month. Said mortgage is acknowledged before John E. Nickerson, a notary public for Nez Perce County, June 17th, 1903, and recorded in the office of the recorder of Nez Perce County and Shoshone County at the request of William F. Kettenbach June 20th, 1903. We also offer in evidence a certified copy of a deed made and executed by Wren Pierce and his wife May Pierce, dated May 31st, 1904, conveying to William F. [1255—925] Kettenbach, in consideration of \$1.00, the land last above described, acknowledged before W. H. Schildts, a notary public for Nez Perce County, May 31st, 1904, and filed for record at the request of William F. Kettenbach in the office of the recorder of Shoshone County, June 3d, 1904.

Mr. TANNAHILL.—The defendants severally waive any further identification of the documents, but severally object to the admission of the documents in evidence in support of bills 406 and 407,

upon the ground that the entry is not involved in either of these actions, and irrelevant and immaterial. The defendants also severally object to the admission in evidence of either of the or any of the final proof papers in support of either of the bills or actions, upon the ground that they are matters relating strictly to the final proof, made long after the filing of the sworn statement, and are irrelevant, incompetent and immaterial.

Said documents were thereupon marked by the Reporter as Exhibits 40, 40A, 40B, 40C, 40D, 40E, 40F, 40G, 40H, 40I, 40J, 40K, 40L, 40M, 40N, 40O, and 40P. [1256—926]

**[Stipulation Re Decease, and Offer of Testimony of
Norman Jackson.]**

Mr. GORDON.—It is stipulated in open court by and between the parties hereto that Norman Jackson who testified as a witness on behalf of the United States in a criminal action then pending in the case entitled *The United States of America vs. William F. Kettenbach, George H. Kester and William Dwyer*, in the United States District Court for the District of Idaho, Northern Division, at Moscow, Idaho, in May, 1907, is dead.

We offer in evidence the testimony of Norman Jackson, given at said trial, which is as follows, and is reported in the transcript of the record referred to in the stipulation heretofore made by and between the parties, No. 1605, at page 994, et seq.

Mr. TANNAHILL.—The defendants severally object to the admission of the evidence of the witness, upon the ground and for the reason that the

evidence then given was in a criminal action then pending in the said District Court, the same being another division from the one in which this action is pending, to wit: The action in which the said witness testified was in the United States District Court for the Northern Division of Idaho; and the actions now pending are in the United States Circuit Court for the District of Idaho, and the evidence is incompetent, irrelevant and immaterial for any purpose, the entry of the witness not being involved in either of the actions; and upon the further ground that the evidence of one witness in a certain action cannot be read into the record in another action and be considered as evidence therein. And the defendants, The Idaho Trust Company, the Lewiston National Bank, of Lewiston, Idaho, the Clearwater Timber Company, the Western Land Company, George E. Thompson, Elizabeth W. Thatcher, Curtis Thatcher, Elizabeth White, Edna P. Kester, Elizabeth Kettenbach, Martha E. Hallett, Kittie E. Dwyer, and the Potlatch Lumber Company, also severally object to the admission of any part or portion of the evidence of the witness Norman Jackson given in said criminal action, in this particular action, upon the same ground as heretofore stated in the objection of the defendants William F. Kettenbach, George H. Kester and William Dwyer, and upon the [1257—927] further ground that the defendants last named were not parties to the criminal action, were not present with their attorney to cross-examine the said witness, had no opportunity to cross-examine him, and cannot be bound by the evidence of the witness then

(Testimony of Norman Jackson.)

given in that particular action.

The following is a copy of the testimony of Norman Jackson, offered by Mr. Gordon on behalf of the complainant:

[Testimony of Norman Jackson, for Complainant.]

“NORMAN JACKSON, a witness called and sworn for the prosecution, testified as follows on

Direct Examination by Mr. RUICK.

Q. Mr. Jackson, where do you reside?

A. At Weiser, Idaho.

(WITNESS continuing:)—I have resided in Idaho seven years; at one time I held the position of Chief Clerk of the State Land Board of the State of Idaho; from January, 1903, to January, 1905, under former Governor Morrison's administration.

My duties as chief clerk were to conduct State land sales, selling State land and in a general way renting and supervising State lands. I had general supervision under the direction of the board. I carried out the orders and instructions of the board.

Q. Now, do you recall the incident of certain selections for the State institutions of lands that were open to settlement in the Lewiston Land District in February, 1904? A. In February?

Q. Yes. A. In April; wasn't it in April?

Q. They were open to the public in April, and open to the state in February? A. Yes, sir.

Q. You recall the incident, do you not?

A. Yes, sir.

Q. You later filed a list of state selections in the

(Testimony of Norman Jackson.)

land office on [1258—928] behalf of the state?

A. Yes, sir.

Q. Now, who directly, who was employed by the State in making the selections?

A. Mr. Goldsmith.

Q. Who was employed under Mr. Goldsmith and hired by the State for the purpose also?

A. I think there were either seven or eight men; they were Melvern Scott, William Dwyer, Mr. J. B. Lafferty, Mr. Snyder—I don't know his initials—of Pierce City, of that section in there and Mr. Bliss, of Clarkston.

Q. Edwin Bliss?

A. I don't know his first name, and William Dwyer, I don't recall the names of the others.

Q. Who hired all these parties for that purpose?

A. Mr. Goldsmith.

Q. The selection was left entirely to him by you?

A. Yes, sir.

Q. Who furnished you with the list upon which you filed? A. Mr. Goldsmith.

Q. You took his lists of land, then, as he furnished them to you and you made such filings in the land office in accordance therewith? A. Yes, sir.

Q. Did you add to or subtract from those lands yourself in any way? A. No, sir.

Q. As they were furnished you by Mr. Goldsmith?

A. No, sir.

Q. Now, do you recall the circumstance of your being there at Lewiston on the day on which you made these filings, upon the behalf of the State?

(Testimony of Norman Jackson.)

A. Yes, sir. [1259—929]

Q. Do you recall the day from memory?

A. Well, only as I have read. I remember it was the 25th of April, was the day when the State could file.

Q. No; that is when they were open.

A. Oh, no, when I was there.

Q. I will state to you for your information that the record shows it was on the 21st that you filed.

A. I don't remember those dates absolutely.

Q. But you recall the occurrence of your filing?

A. Yes, sir.

Q. Now, did you have a conversation with the defendant here, Mr. George H. Kester, relative to the matter of certain selections? A. Yes, sir.

Q. At or about that time? A. Yes, sir.

Q. Now, you may state how it came about that you had the conversation. You need not state what was told you by any other person, but how did it come that you saw Mr. Kester and had this conversation with him?

Mr. FORNEY.—We object to it for the reason that it is incompetent, irrelevant and immaterial in this, that it does not tend to prove any of the allegations of the indictment or connect the defendants in any manner with any of the overt acts set forth; further, that it refers to the lands of the State of Idaho, refers to the lands belonging to the State of Idaho, and not of the United States Government. These defendants are accused of defrauding the

(Testimony of Norman Jackson.)

United States Government, and not the State of Idaho.

Mr. RUICK.—It refers to an effort to get lands also fraudulently from the State of Idaho.

Mr. TANNAHILL.—We object to that, if your Honor please.

The COURT.—Objection overruled. [1260—930]

To which ruling of the Court the defendants then and there excepted, which exception was allowed by the Court, and the witness answered:

A. Well, I understood, or I was told, Mr. Kester wanted to see me in regard to leaving out some lands that he desired to place scrip on, and I saw him in regard to it.

Q. State the conversation, and all the circumstances under which the conversation occurred.

Mr. FORNEY.—Same objection. Your Honor will let the objection go to all of the testimony along this line, and we will not renew our objection.

The COURT.—Yes; overruled.

To which ruling of the Court the defendants then and there excepted, which exception was allowed by the Court, and the witness answered as follows:

Mr. RUICK.—Q. When did this conversation occur?

A. Just before we made our filing. Mr. Kester stated to me that he had furnished Mr. Goldsmith with plats of that country that were very valuable to him, to enable him to make an intelligent selection, that he had in every way furnished information of this character to him, and that in consideration of

(Testimony of Norman Jackson.)

that fact, he thought I should leave out, not select, I think it was about 500 acres of land so that he could place scrip on it. He said it was scrip that he had held for about a year for an opportunity to place it, and he thought it would be justice to him to give him this opportunity to place it as he had benefited the State to a great extent.

Q. Mr. Jackson, you had a talk with me about this the other day, did you? A. Yes, sir.

Q. Had a couple of talks?

A. Yes, sir. [1261—931]

Q. Did you mention any matter of the number of acres in that conversation?

A. I think not; I don't think I did.

Q. You only stated he wanted you to leave out certain lands? A. Yes, sir.

Q. And thought you ought to do it in consideration of his having furnished plats and so forth?

A. Yes, sir.

Q. Now, you recall the number of acres?

A. Yes, sir; I would not be positive of the number, but I think it was about that.

Q. What refreshed your recollection as to the number of acres?

A. I just thought it over afterwards, but I am not very positive as to the number of acres, but that is just my impression.

Q. Tell the circumstances under which you had this conversation, and where it was.

A. Why, it was in the bank at first, and afterwards that evening Mr. Kester took me riding and

(Testimony of Norman Jackson.)

we discussed this.

Q. What did you tell him about it?

A. I told him I could not possibly do it; I had no authority to do anything of the kind, and finally closed the matter by telling him that I would bring the matter before the State land board, and if they saw fit to favor him in any such way that it was all right, and when I went to Boise I mentioned the matter to the governor, Governor Morrison, and he said we couldn't do anything like that, and the matter dropped right there.

Q. Did he mention any particular lands that he wanted you to leave out? A. I think not.

Mr. RUICK.—You may cross-examine.

Mr. FORNEY.—We ask that all the testimony of this witness be [1262—932] stricken out for the reasons stated in our first objection to it. It is incompetent, irrelevant and immaterial, not connected with the defendants in any way, or any overt act as alleged in the indictment.

The COURT.—I supposed when counsel said he called this witness here out of order, and its relation may appear more clearly later. The Court will deny the motion.

To which ruling of the Court the defendants then and there excepted, which exception was allowed by the Court.

Cross-examination by Mr. TANNAHILL.

As a matter of fact, Mr. Jackson, this scrip of Mr. Kester's had already been filed, had it not?

A. I have no recollection of it.

(Testimony of Norman Jackson.)

Q. You don't remember about that?

A. No, sir.

Q. Don't you remember that Mr. Kester told you that the scrip had already been filed and that he did not want you to give him any trouble over it?

The COURT.—Filed where?

Mr. TANNAHILL.—Filed in the land office, the scrip had been filed sometime before that.

Q. Do you understand the question, Mr. Jackson?

A. Yes, sir; I understand it; I don't remember that feature of it; no, sir.

Q. That might have been the conversation, might it not, Mr. Jackson?

A. It may have been, although if so it has slipped my memory.

Q. Do you not remember that that was one of the reasons that you told Mr. Kester you would take it up with the land board or Governor Morrison?

A. No, sir; I do not. [1263—933]

Q. You do not remember that? A. No, sir.

Q. Mr. Kester did not object to your taking it up with the land board? A. Not at all.

Q. And you do not wish to be understood as saying that Mr. Kester wanted you to do anything wrong in this matter, do you, Mr. Jackson?

A. Well, I—

Mr. RUICK.—That is a question, of course, for the jury to consider.

A. Well, I thought I could not do it, whether it was wrong or not.

Q. And you don't know but what this scrip might

(Testimony of Norman Jackson.)

have already been filed? A. No, sir; I do not.

Q. It might have been, this conversation of Mr. Kester might have been for the purpose of trying to avoid trouble or a conflict on the land?

A. It might have been, I guess; yes, sir.

Redirect Examination by Mr. RUICK.

Q. But he did not say anything to that effect, did he? A. Not that I remember of; no.

Q. You used the word 'Melville' Scott. You mean Melvyn Scott, known as Scotty?

A. Yes, sir.

The COURT.—Was he one of the land selectors for the State?

Mr. RUICK.—Yes, sir, one of the men employed by Goldsmith. [1264—934]

Recross-examination by Mr. TANNAHILL.

Q. Mr. Jackson, I will ask you if there was some scrip land in sections 13, 14, 15 and 23, township 38—5 east, that was left by the State?

A. It might have been; if so it has slipped my mind entirely; I did not pay attention to those things.

Q. Don't you remember that this scrip was laid by F. P. Fitzgerald and left by the State, not selected by the State?

A. I don't remember the circumstance.

Q. That might have been the case?

A. It might have been.

(Witness excused.)'' [1265—935]

**[Stipulation Re Timber and Stone Lands Entry of
William H. Kincaid.]**

Mr. GORDON.—It is stipulated by and between the parties in open court that William H. Kincaid filed in the land office at Lewiston, Idaho, timber and stone lands sworn statement No. 1395, June 10th, 1904, for the south half of the southwest quarter of section 14, and the north half of the northwest quarter of section 23, township 38 north, of range 5 east, Boise meridian; that William Dwyer filed a contest against said entry in said land office September 19th, 1904, and that the decision of the local land office was favorable to the contestant; that the Commissioner of the General Land Office, by letter dated September 5th, 1905, reversed the decision of said local land office, and held the entry intact; no appeal was taken, and the case was closed; patent was issued to William H. Kinkaid for said tract of land September 11th, 1907; that William H. Kinkaid and wife Daisy, by deed duly executed and acknowledged October 16th, 1906, conveyed said described tract of land to W. H. North; that said deed was recorded in the office of the recorder of Nez Perce County, Idaho, in Volume 89, page 476, on October 26th, 1906, at the request of the Lewiston Abstract Company; and that said North subsequently conveyed the title to said tract of land to the Clearwater Timber Company, and the title of record now remains in the Clearwater Timber Company.

Mr. TANNAHILL.—The defendants severally object to the evidence upon the ground and for the

reason that it is irrelevant, incompetent and immaterial, the entry referred to in the foregoing stipulation not being involved in either of the actions.

Mr. GORDON.—It is further stipulated by and between the parties to the several actions, in open court, that Charles G. Rigler filed homestead entry No. 10,477 in the land office at Lewiston, Idaho, February 24th, 1904, for the north half of the northwest quarter of section 25, and the south half of the southwest quarter of section 24, township 38 north, of range 5 east, of Boise meridian; that William Dwyer filed a contest against said entry May 25th, 1904; that the case was closed [1266—936] by relinquishment of said entry March 10th, 1906; that Margaret A. Goldsmith filed timber and stone lands sworn statement No. 1847, embracing said land, on March 10th, 1906; that final receipt was issued on said timber and stone lands entry to Margaret A. Goldsmith May 22d, 1906, and that patent was issued to her for said land October 9th, 1907; that Margaret A. Goldsmith, by deed dated September 5th, 1907, conveyed said tract of land to the Clearwater Timber Company, and that said deed was recorded in the office of the Recorder of Nez Perce County, Idaho, September 16th, 1907, at the request of F. J. Davis, and said title now remains of record in the Clearwater Timber Company.

Mr. TANNAHILL.—The same objection as to the preceding entry.

Mr. GORDON.—It is further stipulated by and between the parties in open court that George W. Miller filed homestead entry No. 10,488 in the United

States Land Office at Lewiston, Idaho, February 24th, 1904, for the northeast quarter of section 24, township 38 north, of range 5 east, Boise meridian; that William Dwyer filed a contest against said entry May 25th, 1904, and said contest was closed by relinquishment of entry October 26th, 1904; that Mabel K. Atkinson, a sister of the defendant George H. Kester, filed timber and stone lands sworn statement No. 1544, including said land, in said land office, October 24th, 1904; that receiver's receipt No. 5010 was issued to Mabel K. Atkinson January 16th, 1905; that patent has not issued; that Mabel K. Atkinson and husband, Joseph F. Atkinson, by deed dated May 6th, 1906, conveyed said tract of land to William F. Kettenbach and George H. Kester, and that said deed is recorded in the office of the recorder of Nez Perce County May 15th, 1906; that William F. Kettenbach and wife, and George H. Kester, and wife Edna P. Kester, conveyed said tract of land to the Idaho Trust Company, of Lewiston, by deed dated December 31st, 1909, and said deed is recorded in the office of the recorder of Nez Perce County January 27th, 1910 and that the title to said land now stands of record in the Idaho Trust Company.

Mr. TANNAHILL.—The same objection. [1267—937]

Mr. GORDON.—It is further stipulated by and between the parties in open court that Charles F. Shumaker filed homestead entry No. 10,481 in the United States Land Office at Lewiston, Idaho, October 29th, 1907, for the northeast quarter of section 29, township 38 north, of range 6 east, Boise

meridian; that William Dwyer filed a contest against said entry May 25th, 1904, and said contest case was closed by relinquishment of entry September 6th, 1905; that Joseph F. Atkinson, brother in law to the defendant George H. Kester, filed timber and stone lands sworn statement No. 1,698 on said last described tract of land in the land office at Lewiston, Idaho, September 6th, 1905; that final receipt on said timber and stone entry, No. 5,231, was issued to said Joseph F. Atkinson November 22d, 1905, and that patent was issued on said tract to said Atkinson September 11th, 1907; that Joseph F. Atkinson and wife Mabel K., by deed dated May 8th, 1906, conveyed said last above described tract of land to W. F. Kettenbach and George H. Kester, in consideration of \$2400.00, and said deed was recorded in the office of the Recorder of Nez Perce County, Idaho, May 15th, 1906; that the said William F. Kettenbach and wife Mary J., and George H. Kester and wife Edna P., by deed dated December 31st, 1909, in consideration of \$2.00, conveyed said last above described tract of land to the Idaho Trust Company, of Lewiston, Idaho, said deed being recorded in the office of the Recorder of Nez Perce County January 27th, 1910, and said title is now in the Idaho Trust Company.

Mr. TANNAHILL.—The same objection as to the first entry and stipulation.

Mr. GORDON.—It is further stipulated in open court by and between the parties that Charles B. Thomberg filed homestead entry No. 10,496 in the United States land office at Lewiston, Idaho, Febru-

ary 24th, 1904, for the northwest quarter of section 29, township 38 north, of range 6 east, Boise meridian; that William Dwyer filed a contest against said [1268—938] entry May 25th, 1904, and said contest case was closed by Letter "H" of the Commissioner of the General Land Office, dated September 28th, 1905.

That Charles S. Myers filed timber and stone lands sworn statement No. 1,735 in the United States land office at Lewiston, Idaho, October 30th, 1905, for the land last described; that receiver's receipt No. 5,268 was issued to said Charles S. Myers January 22d, 1906, and that patent was issued to said Charles S. Myers for the land last described September 11th, 1907; that Charles S. Myers and his wife Jannie, by deed dated March 21st, 1906, conveyed said tract of land to William F. Kettenbach and George H. Kester, in consideration of \$1,000.00, and that said deed is recorded in the office of the Recorder of Nez Perce County, Idaho, March 26th, 1906; that William F. Kettenbach and wife Mary Jane, and George H. Kester and wife Edna P., conveyed said tract of land to the Idaho Trust Company, of Lewiston, Idaho, by deed dated December 31st, 1909, in consideration of \$2.00, said deed being recorded in the office of the Recorder of Nez Perce County, Idaho, January 27th, 1910, in volume 100, at page 488, and that the title to said tract of land now stands of record in the name of the Idaho Trust Company.

Mr. TANNAHILL.—The defendants severally object to the evidence, upon the ground that the same is irrelevant, incompetent and immaterial, that said

entry is not involved in either of the actions.

Mr. GORDON.—It is further stipulated by and between the parties in open court that Charles G. Vogelmann filed homestead entry No. 10,501 in the United States land office at Lewiston, Idaho, February 24th, 1904, for the southeast quarter of section 7, township 39 north, of range 5 east, of Boise meridian; that William Dwyer filed a contest against said entry in the United States land office at Lewiston, Idaho, May 25th, 1904, and said contest case was closed by relinquishment of entry November 29th, 1905; that Frank L. Moore filed timber and stone [1269—939] lands sworn statement No. 1,757 on said land, in said land office, November 29, 1905; that receiver's receipt No. 5,308 was issued to said Frank L. Moore February 26th, 1906, and that patent for said land issued to said Frank L. Moore September 11, 1907, and that the title to said land now stands of record in the name of Frank L. Moore.

Mr. TANNAHILL.—The same objection as to the first entry and stipulation.

Mr. GORDON.—It is stipulated by and between the parties in open court that Albert O. Wasson filed homestead entry No. 5,698 in the United States land office at Lewiston, Idaho, June 5, 1899, for the west half of the southeast quarter, and the east half of the southwest quarter of section 34, township 40 north, of range 1 east, Boise meridian; that William Dwyer filed a contest against said entry March 8, 1902, and that said contest case was dismissed for want of prosecution June 17th, 1902, and that patent to said land was issued to said Albert O. Wasson December

13th, 1905, and that title to said land now stands of record in the name of Albert O. Wasson.

Mr. TANNAHILL.—The same objection as to the first entry and stipulation.

Mr. GORDON.—It is further stipulated by and between the parties in open court that William B. Walker filed homestead entry No. 10,579 in the United States land office at Lewiston, Idaho, April 6th, 1904, for the northwest quarter of section 20, township 38 north, of range 5 east, Boise meridian; that William Dwyer filed a contest against said entry May 25th, 1904, and said contest case was closed by relinquishment of entry August 29th, 1904; that Hiram Lewis filed timber and stone lands sworn statement No. 1,567 in said land office December 13th, 1904, on the land last described; that receiver's receipt No. 4,943 was issued to Hiram Lewis November 18th, 1904, for said land; that no patent has yet issued; that Hiram F. Lewis, by deed dated May 10th, 1906, conveyed said tract of land to George H. Kester and William F. Kettenbach, for a consideration of \$2,000.00, and that said deed is recorded in the [1270—940] office of the County Recorder of Nez Perce County, Idaho, May 15th, 1906, in volume 81, at page 626; that William F. Kettenbach and wife Mary Jane, and George H. Kester and wife Edna P., conveyed said tract of land to Idaho Trust Company, of Lewiston, Idaho, by deed dated December 31st, 1909, for a consideration of \$2.00, and that said deed is recorded in the office of the recorder of Nez Perce County, Idaho, January 27th, 1910, in vol. 100, at page 488; and that the title to said tract of land

now stands of record in the name of the Idaho Trust Company.

Mr. TANNAHILL.—The defendants severally object to the evidence, upon the ground that the same is irrelevant, incompetent and immaterial, that said entry is not involved in either of the actions.

Mr. GORDON.—It is further stipulated by and between the parties in open court that Walter Williams filed homestead entry No. 10,484, for the north half of the northeast quarter and the north half of the northwest quarter of section 15, in township 38 north, of range 6 east, Boise meridian, in the United States land office at Lewiston, Idaho, February 24th, 1904; that William Dwyer filed a contest against said entry May 25th, 1904, and that said contest case was closed by relinquishment of entry August 23d, 1904; that Charles Carey filed timber and stone lands sworn statement No. 1,492 in said land office August 23d, 1904, for said last described tract of land; that receiver's receipt for said last described tract of land was issued to said Charles Carey November 18th, 1904, being receiver's receipt No. 4,943; that patent has not issued; that Charles Carey, single, by deed dated April 15th, 1905, conveyed to W. F. Kettenbach and George H. Kester the said tract of land, for a consideration of \$950.00, and that said deed is recorded in the office of the recorder of Nez Perce County, Idaho, February 3d, 1906, in vol. 81, at page 466; that William F. Kettenbach and wife Mary Jane, and George H. Kester and wife Edna P., by deed dated December 31, 1909, conveyed said tract of land to the Idaho Trust Company, of Lewiston,

Idaho, for a consideration of \$2.00, and that said deed is recorded [1271—941] in the office of the recorder of Nez Perce County, Idaho, January 27th, 1910, in vol. 100, at page 488, and that the title to said tract of land now stands of record in the name of the Idaho Trust Company.

Mr. TANNAHILL.—The same objection as to the first entry and stipulation.

Mr. GORDON.—It is further stipulated by and between the parties in open court that Albert J. Flood filed homestead entry No. 10,485 in the United States land office at Lewiston, Idaho, February 24th, 1904, for the south half of the south half of section 15, township 38 north, range 6 east, Boise meridian; that William Dwyer filed a contest against said entry May 25th, 1904, and that said contest case was closed by relinquishment of entry July 11th, 1904; that Albert G. Kester, a brother of the defendant George H. Kester, filed timber and stone lands sworn statement No. 1,451 in said land office, for said land, July 11th, 1904; that receiver's receipt No. 4,879 was issued to said Albert G. Kester for said land September 23d, 1904; that patent has not issued; that Albert G. Kester, single, by deed dated January 4th, 1909, conveyed said tract of land to W. F. Kettenbach and George H. Kester, for a consideration of \$850.00, and that said deed was recorded in the office of the recorder of Nez Perce County, Idaho, May 1st, 1909, at the request of William Dwyer, in book 101, at page 106; that William F. Kettenbach and wife Mary Jane, and George H. Kester and wife Edna P., by deed dated December 31st, 1909, conveyed said

tract of land to the Idaho Trust Company, of Lewiston, Idaho, for a consideration of \$2.00, and that said deed was recorded in the office of the recorder of Nez Perce County, Idaho, at the request of the Nez Perce Abstract Company, January 27th, 1910, in vol. 100, at page 488, and that the title to said tract of land now stands of record in the name of the Idaho Trust Company.

Mr. TANNAHILL.—The same objection as to the first entry and stipulation. [1272—942]

Mr. GORDON.—It is further stipulated by and between the parties in open court that John P. Harlan filed homestead entry No. 10,538 in the United States land office at Lewiston, Idaho, March 9th, 1904, for the west half of the southwest quarter and the west half of the northwest quarter of section 28, township 40 north, range 6 east, Boise meridian; that William Dwyer filed a contest against said entry October 4th, 1904; that said contest case was closed by decision of secretary of the Interior, by Letter "H," dated May 6th, 1907, that said contest was dismissed and said homestead entry held intact; that John P. Harlan, by deed recorded March 19th, 1910, at the request of the North Idaho Title Company, in Deed Record 97, at page 602, conveyed said tract of land to the Clearwater Timber Company; that patent to said land was issued to said John P. Harlan June 30th, 1909, and that the title to said tract of land now stands of record in the name of the Clearwater Timber Company.

Mr. TANNAHILL.—The same objection as to the first entry and stipulation.

Mr. GORDON.—It is further stipulated by and between the parties in open court that John W. Huber filed homestead entry No. 8319 in the United States land office at Lewiston, Idaho, April 17th, 1901, for the west half of the southeast quarter of section 34, township 41 north, range 1 west, Boise meridian; that William Dwyer filed a contest against said entry December 3d, 1901, and said contest case was closed by relinquishment of entry March 9th, 1902; that George W. Ferguson filed timber and stone lands sworn statement No. 744 in said land office, for said land, November 21st, 1902; that receiver's receipt No. 4,234 for said land was issued to said George W. Ferguson February 23d, 1903; that patent has not issued, and that the title to said tract of land now stands of record in the name of George W. Ferguson.

Mr. TANNAHILL.—The same objection as to the first entry and stipulation. [1273—943]

Mr. GORDON.—It is further stipulated by and between the parties in open court that William R. Lawrence filed homestead entry No. 10,486 in the United States land office at Lewiston, Idaho, February 24th, 1904, for the north half of the south half of section 15, township 38 north, range 6 east, Boise meridian; that William Dwyer filed a contest against said entry May 25th, 1904, and that said contest case was closed by relinquishment of entry July 11th, 1904; that Benjamin F. Rowland filed timber and stone lands sworn statement No. 1450 on said land in said land office, July 11th, 1904; that receiver's receipt No. 4878 was issued to Benjamin F.

Rowland September 23d, 1904; that patent has not issued; that Benjamin F. Rowland and wife Hattie, by deed dated April 9th, 1906, conveyed said tract of land to the defendant Kittie E. Dwyer, for a consideration of \$1,000.00, and that said deed was recorded in the office of the Recorder of Nez Perce County, Idaho, at the request of William Dwyer, in vol. 85, at page 501; that Kittie E. Dwyer and husband William, by deed dated December 31st, 1908, conveyed said tract of land to the Idaho Trust Company, of Lewiston, Idaho, for a consideration of \$1,000.00, and that said deed was recorded in the office of the Recorder of Nez Perce County, Idaho, at the request of the Nez Perce Abstract Company, January 4th, 1909, in vol. 99, at page 464, and that the title to said tract of land now stands of record in the name of the Idaho Trust Company.

Mr. TANNAHILL.—The same objection as to the first entry and stipulation.

Mr. GORDON.—It is further stipulated by and between the parties in open court that Fred. H. McConnell filed homestead entry No. 10,464 in the United States land office at Lewiston, Idaho, February 24th, 1904, for the northeast quarter of section 30, township 38 north, range 6 east, Boise meridian; that Malvern C. Scott filed a contest against said entry May 24th, 1904, and that said contest was closed by relinquishment of entry August 5th, 1904; that Malvern C. Scott filed timber and stone lands sworn statement No. 1466 in said land office on [1274—944] August 5th, 1904, for said tract of land; that receiver's receipt No. 4919 was issued to Malvern C.

Scott for said tract of land October 21st, 1904; that patent has not issued; that Malvern C. Scott, single, by deed dated February 5th, 1906, for a consideration of \$850.00, conveyed said tract of land to William F. Kettenbach and George H. Kester, and that said deed was recorded in the office of the Recorder of Nez Perce County, Idaho, on February 9th, 1906, at the request of the Lewiston National Bank, in vol. 85, at page 307; that William F. Kettenbach and wife Mary Jane, and George H. Kester and wife Edna P., by deed dated December 31st, 1909, for a consideration of \$2.00, conveyed said tract of land to the Idaho Trust Company, of Lewiston, Idaho, and that said deed was recorded in the office of the Recorder of Nez Perce County, Idaho, at the request of the Nez Perce Abstract Company, on January 27th, 1910, in vol. 100, at page 488, and that the title to said tract of land now stands of record in the name of the Idaho Trust Company.

Mr. TANNAHILL.—The same objection as to the first entry and stipulation.

Mr. GORDON.—It is further stipulated by and between the parties in open court that Frank A. McConnell filed homestead entry No. 10,461 in the United States land office at Lewiston, Idaho, February 24th, 1904, for the southwest quarter of section 20, township 38 north, range 6 east, Boise meridian; that William Dwyer filed a contest against said entry September 12th, 1904, and that said contest case was closed by relinquishment of entry December 12th, 1904; that Margaret A. Miller filed timber and stone lands sworn statement No. 1566 in said land office on

said land December 12th, 1904; that receiver's receipt No. 5045 was issued to Margaret A. Miller for said land March 7th, 1905; that patent has not issued; that Margaret A. Miller, widow, by deed dated January 24th, 1906, for a consideration of \$850.00, conveyed said tract of land to Kittie E. Dwyer, and that said deed was recorded in the office of the Recorder of Nez Perce County, Idaho, at the request of William Dwyer, January 27th, 1906, in Deed Record 85, at page 270, and [1275—945] that the title to said tract of land now stands of record in the name of Kittie E. Dwyer.

Mr. TANNAHILL.—The same objection as to the first entry and stipulation.

Mr. GORDON.—It is further stipulated by and between the parties in open court that Albert Anderson filed homestead entry No. 10,493 in the United States land office at Lewiston, Idaho, February 24th, 1904, for the southeast quarter of section 30, township 38 north, range 6 east, Boise meridian; that William Dwyer filed a contest against said entry May 25th, 1904, and that said contest case was closed by relinquishment of entry December 12th, 1904; that Mary E. Sherman filed timber and stone lands sworn statement No. 1564 in said land office on said land December 12th, 1904; that receiver's receipt No. 5042 was issued to Mary E. Sherman for said land March 6th, 1905; that patent has not issued; that Mary E. Sherman and husband Charles, by deed dated March 7th, 1905, for a consideration of \$850.00, conveyed said tract of land to Kittie E. Dwyer, and that said deed was recorded in the office of the Re-

corder of Nez Perce County January 18th, 1906, at the request of William Dwyer, in book 81, at page 435; that Kittie E. Dwyer and husband William, by deed dated December 31st, 1908, for a consideration of \$1.00, conveyed said tract of land to the Idaho Trust Company, of Lewiston, Idaho, and that said deed was recorded in the office of the Recorder of Nez Perce County, Idaho, at the request of the Lewiston Abstract Company, January 4th, 1909, in vol. 99, page 464, and that the title to said tract of land now stands of record in the name of the Idaho Trust Company.

Mr. TANNAHILL.—The same objection as to the first entry and stipulation.

Mr. GORDON.—It is further stipulated by and between the parties in open court that George G. James filed homestead entry No. 10,469 in the United States land office at Lewiston, Idaho, February 24th, 1904, for the north half of the southeast quarter of section 8, and the north [1276—946] half of the southwest quarter of section 9, township 38 north, range 6 east, Boise meridian; that William Dwyer filed a contest against said entry, and that said contest was closed by relinquishment of entry; said relinquishment being under date of September 21st, 1904; that George C. Davenport filed timber and stone lands sworn statement No. 1526 on said land in said land office September 21st, 1904; that cash entry No. 4984 for said land was issued to said George C. Davenport December 14th, 1904; that patent has not issued; that receiver's receipt to George C. Davenport, dated December 14th, 1904, was recorded in the

office of the Recorder of Nez Perce County, Idaho, at the request of the Lewiston National Bank, May 15th, 1906, in book 3, page 330; description of said receiver's receipt being the north half of the southeast quarter of section 8, and the north half of the southwest quarter of section 9, township 38 north, range 6 east, Boise meridian; that George C. Davenport and wife Mary, by deed dated May 10th, 1906, for a consideration of \$1500.00, conveyed said tract of land to William K. Kettenbach and George H. Kester, and that said deed was recorded in the office of the County Recorder of Nez Perce County, Idaho, at the request of the Lewiston National Bank, May 15th, 1906, in book 84, at page 595; that William F. Kettenbach and wife Mary Jane, and George H. Kester and wife Edna P., by deed dated December 31st, 1909, for a consideration of \$2.00, conveyed said tract of land to the Idaho Trust Company, of Lewiston, Idaho, and that said deed was recorded in the office of the County Recorder of Nez Perce County, at the request of the Nez Perce Abstract Company, January 27th, 1910, in book 10, page 488, and that the title to said tract of land now stands of record in the name of the Idaho Trust Company.

Mr. TANNAHILL.—The same objection as to the first entry and stipulation. [1277—947]

Mr. GORDON.—It is further stipulated by and between the parties in open court that John McHardie filed homestead entry No. 10,638 in the United States land office at Lewiston, Idaho, April 18th, 1904, for the southeast quarter of section 19, township 38 north, range 6 east, Boise meridian;

that William Dwyer filed a contest against said entry May 24th, 1904, and that said contest case was closed by relinquishment of entry September 8th, 1904; that Edwin Bliss filed timber and stone lands sworn statement No. 1515 on said land in said land office September 8th, 1904; that receiver's receipt No. 4950 was issued to Edwin Bliss for said land; that patent has not issued; that Edwin Bliss and wife Catherine, by deed dated May 12th, 1906, for a consideration of \$1,250.00, conveyed said land to William F. Kettenbach and George H. Kester, and that said deed was recorded in the office of the Recorder of Nez Perce County, Idaho, at the request of the Lewiston National Bank, May 15th, 1906, in vol. 84, at page 596; that William F. Kettenbach and wife Mary Jane, and George H. Kester and wife Edna P., by deed dated December 31st, 1909, for a consideration of \$2.00, conveyed said tract of land to the Idaho Trust Company, and that said deed is recorded in the office of the County Recorder of Nez Perce County, Idaho, at the request of the Nez Perce Abstract Company, January 27th, 1910, in vol. 100, at page 488, and that the title to said tract of land now stands of record in the name of the Idaho Trust Company.

Mr. TANNAHILL.—The same objection as to the first entry and stipulation.

Mr. GORDON.—It is further stipulated by and between the parties in open court that Carl Rogers filed homestead entry No. 10,475 in the United States land office at Lewiston, Idaho, February 24th, 1904, for the northeast quarter of section 12, township 38 north, range 5 east, Boise meridian; that said entry

was relinquished March 20th, 1906; that Carl Rogers filed timber and stone lands sworn statement No. 1858 for said land in said land office March 20th, 1906; that William Dwyer filed a contest against said last [1278—948] mentioned filing May 4th, 1906, and that said contest case was closed by relinquishment of filing March 14th, 1908; that Northern Pacific List No. 81, embracing said land, was filed March 14th, 1908, the nonmineral affidavit being executed by William Dwyer; that L. Grace Rogers filed homestead entry No. 10,474 in the United States land office at Lewiston, Idaho, February 24th, 1904, for the southwest quarter of the southwest quarter, the north half of the southwest quarter, and the northwest quarter of the southeast quarter of section 12, T. 38 north, range 5 east, Boise meridian; that said homestead entry was relinquished March 20th, 1906; that Lena Grace Rogers Ford filed timber and stone lands sworn statement No. 1857, for the land last described, in said land office, March 20th, 1906; that William Dwyer filed a contest against said last mentioned filing June 1st, 1907; that the Register and Receiver of the Lewiston land office held in favor of contestant; that the papers in said contest case were transmitted to the general land office, but that there is no further action noted of record; that Northern Pacific Railroad Company filed List 82 in said land office March 14th, 1908, the nonmineral affidavit being executed by William Dwyer; that T. Waldo Murphy and wife Laura M., by deed dated April 6th, 1908, for a consideration of \$2,640.00, conveyed to W. F. Kettenbach a one-half

interest in the northeast quarter, the southwest quarter of the southwest quarter, the north half of the southwest quarter, and the northwest quarter of the southeast quarter of section 12, township 38 north, range 5 east, Boise meridian, and that said deed was recorded in the office of the recorder of Nez Perce County, Idaho, at the request of the Lewiston National Bank, April 23d, 1108, in deed record 95, at page 242; that T. Waldo Murphy and wife Laura M., by deed dated April 6th, 1908, for a consideration of \$2,640.00, conveyed to R. C. Beach a one-fourth interest in the lands last described, and that said deed was recorded at the request of the Lewiston National Bank in the office of the Recorder of Nez Perce County, Idaho, April 23d, 1908, in vol. 95, at page 241; that T. Waldo Murphy and wife Laura M., by deed dated April [1279—949] 6th, 1909, for a consideration of \$2,640.00, conveyed to George H. Kester a one-fourth interest in the lands last described, and that said deed was recorded at the request of the William Dwyer in the office of the County Recorder of Nez Perce County, Idaho, April 8th, 1909, in vol. 100, page 86.

Mr. TANNAHILL.—The same objection as to the first entry and stipulation.

Mr. GORDON.—It is further stipulated by and between the parties in open court that Frank Lillgren filed homestead entry No. 7022 in the United States land office at Lewiston, Idaho, June 23d, 1899, for the southeast quarter of section 34, township 40 north, range 2 east, Boise meridian; that William Dwyer filed a contest against said entry

December 1st, 1900; that said entry was relinquished November 22, 1901; that Kittie E. Dwyer filed timber and stone lands sworn statement for said land, and cash entry No. 3587 was issued to Kittie E. Dwyer February 5th, 1902; that patent was issued to said Kittie E. Dwyer for said land October 12th, 1903; that said patent was recorded in the office of the County Recorder of Nez Perce County at the request of the Shoshone Abstract Company November 21st, 1903, in B. 83½, at page 356; that Kittie E. Dwyer and husband William, by deed dated August 25th, 1902, for a consideration of \$3,500.00, conveyed said land last described to the Wisconsin Log and Lumber Company, and that said deed was recorded in the office of the Recorder of Nez Perce County, Idaho, at the request of the Wisconsin Log and Lumber Company, September 17th, 1902, in book 83, at page 464; that the Wisconsin Log and Lumber Company and the Northland Pine Company, by deed dated April 10th, 1903, conveyed said land last described, with other lands, to the Potlatch Lumber Company, for a consideration of \$27,744.70, and that said deed was recorded at the request of the Shoshone Abstract Company in the office of the Recorder of Nez Perce County, Idaho, May 2d, 1903, in B. 83½, at page 142, and that the title to said tract of land now stands of record in the name of the Potlatch Lumber Company. [1280—950]

Mr. TANNAHILL.—The same objection as to the first entry and stipulation.

Mr. GORDON.—It is further stipulated by and between the parties in open court that Susan Com-

stock filed homestead entry No. 10,495 in the United States land office at Lewiston, Idaho, May 25th, 1904, for the northeast quarter of section 29, township 39 north, range 5 east, Boise meridian; that said entry was relinquished October 26th, 1904; that William Dwyer filed a contest against said entry May 25th, 1904, and that said contest case was closed by relinquishment of entry; that Edward M. Lewis filed timber and stone lands sworn statement No. 1543 in said land office for the north half of the northeast quarter of section 29, township 39 north, range 5 east, Boise meridian, October 26th, 1904; that F. C. No. 5016 was issued to Edward M. Lewis for the land last described and for the southwest quarter of the northeast quarter of section 29, township 39 north, range 5 east, Boise meridian; that no patent has issued; that William E. Helkenberg filed timber and stone lands sworn statement No. 1542 in said land office October 26th, 1904, for the southeast quarter of the northeast quarter of section 29, township 39 north, range 5 east, Boise meridian; that F. C. No. 5015 was issued January 20th, 1905, to William E. Helkenberg for the land last described, and that patent was issued May 29th, 1907, to William E. Helkenberg, for the land last described; that receiver's receipt to Edward M. Lewis for the north half of the northeast quarter, and the southwest quarter of the northeast quarter of section 20, township 39 north, range 5 east, Boise meridian, dated January 20th, 1905, was recorded in the office of the County Recorder of Nez Perce County, Idaho, September 21st, 1909, at the request of William Dwyer,

for W. F. Kettenbach, in book 6, page 63; that Edward M. Lewis, by deed dated March 2, 1906, for a consideration of \$850.00, conveyed the tract of land last described to H. F. Lewis, and that said deed was recorded in the office of the Recorder of Nez Perce County, Idaho, March 2, 1906, at the request of H. F. Lewis, in book 85, page 376; that Hiram F. Lewis, by deed dated [1281—951] May 10th, 1906, for a consideration of \$2,000.00, conveyed the tract of land last described to George H. Kester and William F. Dwyer, and that said deed was recorded in the office of the Recorder for Nez Perce County May 15th, 1906, at the request of the Lewiston National Bank, in book 81, page 626; that receiver's receipt to William E. Helkenberg, dated January 20th, 1905, for the northwest quarter of the southwest quarter of section 28, and the northeast quarter of the southeast quarter, and the southeast quarter of the northeast quarter of section 29, township 39 north, range 5 east, Boise meridian, was recorded November 11, 1905, in book 3, page 283, in the office of the Recorder of Nez Perce County, Idaho, at the request of; that William E. Helkenberg and wife Lillian, by deed dated October 18, 1905, for a consideration of \$900.00, conveyed the northwest quarter of the southeast quarter of section 28, the northeast quarter of the southeast quarter and the southeast quarter of the northeast quarter of section 29, township 39 north, range 5 east, Boise meridian, to George H. Kester and William F. Kettenbach, and that said deed is recorded in the office of the Recorder of Nez Perce County, Idaho, November 11th,

1905, at the request of, in book 81, page 308; that William F. Kettenbach and wife Mary Jane, and George H. Kester and wife Edna P., by deed dated July 6th, 1907, for a consideration of \$1.00, conveyed to the Idaho Trust Company, a corporation, the north half of the northeast quarter, and the southwest quarter of the northeast quarter, of section 29, the northwest quarter of the southwest quarter of section 28, the northeast quarter of the southeast quarter, and the southeast quarter of the northeast quarter of section 29, township 39 north, range 5 east, Boise meridian, and that said deed was recorded in the office of the Recorder of Nez Perce County, Idaho, July 10th, 1907, in book 87, page 537.

[Stipulation Re Homestead Entry of John Maier.]

Mr. TANNAHILL.—The same objection as to the first entry and stipulation. [1282—952]

Mr. GORDON.—It is further stipulated by and between the parties in open court that John Maier filed homestead entry No. 5434 in the United States land office at Lewiston, Idaho, October 29th, 1897, for the southwest quarter of the southwest quarter, the east half of the southwest quarter, and the southeast quarter of the northwest quarter of section 25, township 41 north, range 2 west, Boise meridian; that William Dwyer filed a contest against said entry August 7th, 1901, and said contest case was closed by relinquishment of entry September 7th, 1901; that Peter Collins filed Lieu Selection No. 5632 upon said tract of land March 19th, 1902, and that patent for said tract of land was

issued to Peter Collins March 4th, 1904. [1283—953]

[Offer of Notice of *Lis Pendens* Dated October 16, 1907, in *U. S. A. vs. Kettenbach et al.*]

Mr. GORDON.—We offer in evidence the notice of *lis pendens* in the case of United States of America, Complainant, vs. William F. Kettenbach and Others, Defendants, filed for record in the office of the recorder of Nez Perce County, Idaho, October 16, 1907, at nine o'clock A. M., and recorded in book 1 of *Lis Pendens*, at page 211, which reads as follows:

“35,329 LIS PENDENS.

In the Circuit Court of the United States, Ninth Circuit, District of Idaho, Northern Division.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH, GEORGE H. KESTER, WILLIAM DWYER, CLARENCE W. ROBBETT, and FRANK W. KETTENBACH,

Respondents.

NOTICE OF LIS PENDENS.

Notice is hereby given that a suit has been commenced in the above-named court by the above-named complainant against the above-named respondents, which suit is now pending; that the object of said suit is to vacate, annul and set aside certain United States patents heretofore issued by the United States of America, at the instance and by the procurements of the defendants, William F. Kettenbach, George

H. Kester, William Dwyer, and Clarence W. Robnett, to the following named persons and for the lands described after each name, respectively:

Carrie D. Maris. SE. $\frac{1}{4}$ SW. $\frac{1}{4}$, Sec. 12, E. $\frac{1}{2}$ NW. $\frac{1}{4}$, NE. $\frac{1}{4}$ SE. $\frac{1}{4}$, Sec. 13, Tp. 36 N., R. 5 E., B. M.

William B. Benton. S. $\frac{1}{2}$ NW. $\frac{1}{4}$, N. $\frac{1}{2}$ SW. $\frac{1}{4}$, Sec. 15, Tp. 39 N., R. 3 E., B. M.

Joel H. Benton. S. $\frac{1}{2}$ SW. $\frac{1}{4}$, S. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 15, Tp. 39 N., R. 3 E., B. M. [1284—954]

Henderson F. Dizney. N. $\frac{1}{2}$ NW. $\frac{1}{4}$, SW. $\frac{1}{4}$ NW. $\frac{1}{4}$ Sec. 14, SE. $\frac{1}{4}$ SW. $\frac{1}{4}$, Sec. 11, Tp. 40 N., R. 3 E., B. M.

Harry S. Palmer. E. $\frac{1}{2}$ SW. $\frac{1}{4}$, S. $\frac{1}{2}$ SE. $\frac{1}{4}$ Sec. 33, Tp. 40 N., R. 4 E., B. M.

George W. Harrington. W. $\frac{1}{2}$ NW. $\frac{1}{4}$, NE. $\frac{1}{4}$, NW. $\frac{1}{4}$, NW. $\frac{1}{4}$ NE. $\frac{1}{4}$, Sec. 10, Tp. 36 N., R. 5 E., B. M.

Robert N. Wright. Lot 1, SE. $\frac{1}{4}$ NE. $\frac{1}{4}$, E. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 1, Tp. 33 N., R. 5 E., B. M.

Maud N. Wright. Lot 1, SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ E. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 3, Tp. 33 N., R. 5 E., B. M.

Van W. Robertson. SW. $\frac{1}{4}$, Sec. 10, Tp. 39 N., R. 3 E., B. M.

John W. Killinger. N. $\frac{1}{2}$ SW. $\frac{1}{4}$, N. $\frac{1}{2}$ SE. $\frac{1}{4}$ Sec. 13, Tp. 39 N., R. 2 E., B. M.

John E. Nelson. NE. $\frac{1}{4}$, Sec. 24, Tp. 39 N., R. 2 E., B. M.

Soren Hansen. SE. $\frac{1}{4}$ Sec. 10, Tp. 39 N., R. 3 E., B. M.

John H. Little. Lot 1, W. $\frac{1}{2}$ NE. $\frac{1}{4}$, SE. $\frac{1}{4}$ NE. $\frac{1}{4}$, Sec. 25, Tp. 39 N., R. 3 E., B. M.

Ellsworth M. Harrington. Lot 1, NW. $\frac{1}{4}$ NE. $\frac{1}{4}$,
N. $\frac{1}{2}$ NW. $\frac{1}{4}$, Sec. 24, Tp. 39 N., R. 3 E., B. M.

Wren Pierce. SE. $\frac{1}{4}$ Sec. 22, Tp. 39 N., R. 3 E.,
B. M.

Benjamin F. Bashor. Lot 4, SW. $\frac{1}{4}$ SE. $\frac{1}{4}$, S. $\frac{1}{2}$,
SW. $\frac{1}{4}$, Sec. 24, Tp. 39 N., R. 3 E., B. M.

Jas. C. Evans. S. $\frac{1}{2}$ NW. $\frac{1}{4}$ W. $\frac{1}{2}$ SW. $\frac{1}{4}$, Sec. 25,
Tp. 39 N., R. 3 E., B. M.

Pearl Washburn. E. $\frac{1}{2}$ SE. $\frac{1}{4}$, SE. $\frac{1}{4}$ NE. $\frac{1}{4}$, Sec.
27, Tp. 40 N., R. 4 E., B. M.

Lon E. Bishop. W. $\frac{1}{2}$ SE. $\frac{1}{4}$, S. $\frac{1}{2}$ SW. $\frac{1}{4}$, Sec. 23,
Tp. 39 N., R. 3 E., B. M.

Joseph B. Clute. S. $\frac{1}{2}$ NE. $\frac{1}{4}$, E. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 26,
Tp. 39 N., R. 3 E., B. M.

Frederick W. Newman. S. $\frac{1}{2}$ NE. $\frac{1}{4}$, E. $\frac{1}{2}$ SE. $\frac{1}{4}$,
Sec. 23, Tp. 39 N., R. 3 E., B. M.

Francis M. Long. N. $\frac{1}{2}$ SW. $\frac{1}{4}$, N. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec.
13, Tp. 39 N., R. 3 E., B. M.

John H. Long. Lot 2, SW. $\frac{1}{4}$ NE. $\frac{1}{4}$, S. $\frac{1}{2}$ NW. $\frac{1}{4}$,
Sec. 24, Tp. 39 N., R. 3 E., B. M. [1285—955]

Benjamin F. Long. S. $\frac{1}{2}$ NW. $\frac{1}{4}$, S. $\frac{1}{2}$ NE. $\frac{1}{4}$, Sec.
18, Tp. 39 N., R. 3 E., B. M.

Charles Dent. N. $\frac{1}{2}$ NE. $\frac{1}{4}$, N. $\frac{1}{2}$ NW. $\frac{1}{4}$, Sec. 14,
Tp. 39 N., R. 3 E., B. M.

Charles Smith. NW. $\frac{1}{4}$ SW. $\frac{1}{4}$, Sec. 14, SE. $\frac{1}{4}$
NE. $\frac{1}{4}$, N. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 15, Tp. 39 N., R. 3 E.,
B. M.

George Morrison. NE. $\frac{1}{4}$, Sec. 22, Tp. 39 N., R. 3
E., B. M.

Edward M. Hyde. NW. $\frac{1}{4}$, Sec. 22, Tp. 39 N., R. 3
E., B. M.

Bertsel H. Ferris. Lot 3, NW. $\frac{1}{4}$ SE. $\frac{1}{4}$, N. $\frac{1}{2}$ SW.
 $\frac{1}{4}$, Sec. 24, Tp. 39 N., R. 3 E., B. M.

- George Ray Robinson, N. $\frac{1}{2}$ NW. $\frac{1}{4}$, N. $\frac{1}{2}$ NE. $\frac{1}{4}$,
Sec. 26, Tp. 39 N., R. 3 E., B. M.
- Drury M. Gammon. SE. $\frac{1}{4}$ SE. $\frac{1}{4}$, Sec. 26, SW. $\frac{1}{4}$
SW. $\frac{1}{4}$, Sec. 25, N. $\frac{1}{2}$ NE. $\frac{1}{4}$, Sec. 25, Tp. 40 N.,
R. 3 E., B. M.
- Chas. W. Taylor. Lots 1, 2, E. $\frac{1}{2}$ NW. $\frac{1}{4}$, Sec.
30, Tp. 38 N., R. 6 E., B. M.
- Jackson O'Keefe. W. $\frac{1}{2}$ SE. $\frac{1}{4}$, E. $\frac{1}{2}$ SW. $\frac{1}{4}$, Sec.
23, Tp. 38 N., R. 5 E., B. M.
- Edgar J. Taylor. Lots 3, 4, E. $\frac{1}{2}$ SW. $\frac{1}{4}$, Sec. 18,
Tp. 38 N., R. 6 E., B. M.
- Joseph H. Prentice. Lots 1, 2, E. $\frac{1}{2}$ NW. $\frac{1}{4}$, Sec.
18, Tp. 38 N., R. 6 E., B. M.
- George H. Kester. N. $\frac{1}{2}$ NE. $\frac{1}{4}$, Sec. 30, SW. $\frac{1}{4}$
SE. $\frac{1}{4}$, SE. $\frac{1}{4}$ SW. $\frac{1}{4}$, Sec. 19, Tp. 39 N., R. 5 E.,
B. M.
- Guy L. Wilson. Lots 3, 4, NE. $\frac{1}{4}$ SW. $\frac{1}{4}$, NW. $\frac{1}{4}$
SE. $\frac{1}{4}$, Sec. 19, Tp. 39 N., R. 5 E., B. M.
- Frances A. Justice. Lots 3, 4, E. $\frac{1}{2}$ SW. $\frac{1}{4}$, Sec. 19,
Tp. 38 N., R. 6 E., B. M.
- Fred A. Justice. E. $\frac{1}{2}$ NE. $\frac{1}{4}$, E. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 20,
Tp. 38 N., R. 6 E., B. M.
- Edna P. Kester. N. $\frac{1}{2}$ NE. $\frac{1}{4}$, N. $\frac{1}{2}$ NW. $\frac{1}{4}$, Sec.
14, Tp. 38 N., R. 5 E., B. M.
- Elizabeth Kettenbach. W. $\frac{1}{2}$ NE. $\frac{1}{4}$, W. $\frac{1}{2}$ SE. $\frac{1}{4}$,
Sec. 13, Tp. 38 N., R. 5 E., B. M.
- William J. White. S. $\frac{1}{2}$ NW. $\frac{1}{4}$, S. $\frac{1}{2}$ NE. $\frac{1}{4}$, Sec.
14, Tp. 38 N., R. 5 E., B. M. [1286—956]
- Elizabeth White. S. $\frac{1}{2}$ NW. $\frac{1}{4}$ S. $\frac{1}{2}$ NE. $\frac{1}{4}$, Sec.
23, Tp. 38 N., R. 5 E., B. M.
- Mamie P. White. N. $\frac{1}{2}$ SW. $\frac{1}{4}$, N. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec.
14, Tp. 38 N., R. 5 E., B. M.
- Walter E. Daggett. Lots 2, 3, 7, 8 and 9, Sec. 5, Tp.

40 N., R. 5 E., B. M.

Martha E. Hallett. Lots 1, 2, E. $\frac{1}{2}$ NW. $\frac{1}{4}$, Sec. 19,
Tp. 38 N., R. 6 E., B. M.

Daniel W. Greenburg. SW. $\frac{1}{4}$, Sec. 17, Tp. 39 N.,
R. 5 E., B. M.

David S. Bingham. SE. $\frac{1}{4}$, Sec. 17, Tp. 39 N., R.
5 E., B. M.

William McMillan. SE. $\frac{1}{4}$, Sec. 21, Tp. 39 N., R.
5 E., B. M.

Hattie Rowland. SE. $\frac{1}{4}$, NW. $\frac{1}{4}$, S. $\frac{1}{2}$ NE. $\frac{1}{4}$, NE.
 $\frac{1}{4}$ SE. $\frac{1}{4}$, Sec. 15, Tp. 38 N., R. 5 E., B. M.

Edgar H. Dammarell. NE. $\frac{1}{4}$, Sec. 19, Tp. 38 N.,
R. 6 E., B. M.

William E. Helkenbery. NW. $\frac{1}{4}$, SW. $\frac{1}{4}$, Sec. 28,
NE. $\frac{1}{4}$ SE. $\frac{1}{4}$, SE. $\frac{1}{4}$ NE. $\frac{1}{4}$, Sec. 29, Tp. 39 N.,
R. 5 E., B. M.

William Havernick. SE. $\frac{1}{4}$ SE. $\frac{1}{4}$, Sec. 23, NE. $\frac{1}{4}$
NE. $\frac{1}{4}$, Sec. 26, Tp. 37 N., R. 2 E., B. M.

Geary Van Ardsdalen. NE. $\frac{1}{4}$, Sec. 25, Tp. 37 N.,
R. 5 E., B. M.

All of said lands being in the Lewiston, Idaho, land
district, and in Nez Perce County, in the State and
district of Idaho.

CHARLES J. BONAPARTE,

Attorney General of the United States,

N. M. RUICK,

United States Attorney, District of Idaho,

MILES S. JOHNSON,

Assistant United States Attorney, District
of Idaho,

Solicitors for Complainant.

Dated October 14, 1907.

Filed for record October 16th, A. D. 1907, at 9 o'clock A. M., request of U. S. Attorney.

W. L. GIFFORD,

Recorder.

By R. L. Thompson,

Deputy. [1287—957]

Fees, \$2.55."

[Offer of Notice of Lis Pendens Dated September 7, 1907, in U. S. A. vs. Kettenbach et al.]

Mr. GORDON.—We offer in evidence the notice of *Lis Pendens* in the equity cause, United States of America vs. William F. Kettenbach and others, recorded September 7, 1909, at nine o'clock A. M., in the records of the recorder of Nez Perce County, State of Idaho, in book of *Lis Pendens* No. 1, at page 296, and which reads as follows:

“ #47,509 LIS PENDENS.

In the Circuit Court of the United States for the District of Idaho, Northern Division.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH, GEORGE H. KESTER, CLARENCE W. ROBNETT, WILLIAM DWYER, THE IDAHO TRUST COMPANY, THE LEWISTON NATIONAL BANK, OF LEWISTON, IDAHO, THE CLEARWATER TIMBER COMPANY, THE WESTERN LAND COMPANY, GEORGE E. THOMPSON, ELIZABETH W. THATCHER, CURTIS THATCHER,

ELIZABEH WHITE, EDNA P. KESTER,
ELIZABETH KETTENBACH, MARTHA
E. HALLETT, KITTIE E. DWYER, POT-
LATCH LUMBER COMPANY, ROBERT
O. WALDMAN,

Defendants.

NOTICE OF LIS PENDENS.

Notice is hereby given, that a suit in Equity has been commenced in the above-named court, by the above-named complainant against the above-named defendants, which suit is now pending; that the object of said suit is to vacate, annul, set aside and cancel certain United States patents, heretofore issued by the United States [1288—958] of America, at the instance and by the procurement of the defendants, William F. Kettenbach, George H. Kester, Clarence W. Robnett and William Dwyer, to the following named persons, and for the lands described and set out, after and opposite the name of each person respectively;

William B. Benton: The south half of the northwest quarter, and the north half of the southwest quarter, of section fifteen, in township thirty-nine, north of range three east, Boise meridian.

Joel H. Benton: The south half of the southwest quarter, and the south half of the southeast quarter of section fifteen in township thirty-nine north of range three east, Boise meridian.

George W. Harrington: The west half of the northwest quarter, the northeast quarter of the northwest quarter, and the northwest quarter of the northeast quarter, of section ten, in township

thirty-six north of range five east, Boise meridian.

Van V. Robertson: The southwest quarter of section ten, in Township thirty-nine north of range three east, Boise meridian.

John W. Killinger: The north half of the southwest quarter, and the north half of the southeast quarter of section thirteen, in township thirty-nine north of range two east, Boise meridian.

John E. Nelson: The northeast quarter of section twenty-four in township thirty-nine north of range two east, Boise meridian.

Soren Hansen: The southeast quarter of section ten in township thirty-nine north of range three east, Boise meridian.

James C. Evans: The south half of the northwest quarter and the west half of the southwest quarter, of section twenty-five, in township thirty-nine north of range three east, Boise meridian.

Pearl Washburn: The east half of the southeast quarter and the southeast quarter of the northeast quarter of section twenty-seven in township forty north of range four east, Boise meridian.

Lon E. Bishop: The west half of the southeast quarter, and the [1289—959] south half of the southwest quarter, of section twenty-three in township thirty-nine north of range three east, Boise meridian.

Frederick W. Newman: The south half of the northeast quarter, and the east half of the southeast quarter of section twenty-three in township

thirty-nine north of range three east, Boise meridian.

Charles Dent: The north half of the northeast quarter, and the north half of the northwest quarter of section fourteen, in township thirty-nine north of range three east, Boise meridian.

Charles Smith: The northwest quarter of the southwest quarter of section fourteen, the southeast quarter of the northeast quarter, and the north half of the southeast quarter of section fifteen, in township thirty-nine north of range three east, Boise meridian.

George Morrison: Northeast quarter of section twenty-two, in township thirty-nine north of range three east, Boise meridian.

Edward M. Hyde: The northwest quarter of section twenty-two in township thirty-nine north of range three east, Boise meridian.

Drury M. Gammon: The southeast quarter of the southeast quarter of section twenty-six, and the southwest quarter of the southwest quarter of section twenty-five and the north half of the northeast quarter of section thirty-five all in township forty north of range three east of Boise meridian.

Guy L. Wilson: Lots three and four, the northeast quarter of the southwest quarter, and the northwest quarter of the southeast quarter, of section nineteen in township thirty-nine north of range five east, Boise meridian.

Frances A. Justice: Lots three and four, and the east half of the southwest quarter of section nineteen

in township thirty-eight north of range six east, Boise meridian.

Edna P. Kester: The north half of the northeast quarter and the north half of the northwest quarter of section fourteen in township thirty-eight north of range five east, Boise meridian.
[1290—960]

Elizabeth Kettenbach: The west half of the northeast quarter and the west half of the southeast quarter of section thirteen in township thirty-eight north of range five east, Boise meridian.

William J. White: The south half of the northwest quarter, and the south half of the northeast quarter of section fourteen in township thirty-eight north of range five east, Boise meridian.

Elizabeth White: The south half of the northwest quarter, and the south half of the northeast quarter of section twenty-three, in township thirty-eight north of range five east, Boise meridian.

Mamie P. White: The north half of the southwest quarter, and the north half of the southeast quarter of section fourteen, in township thirty-eight north of range five east, Boise meridian.

Martha E. Hallett: Lots one and two and the east half of the northwest quarter of section nineteen in township thirty-eight north of range six east, Boise meridian.

Daniel W. Greenburg: Southwest quarter of section seventeen, in township thirty-nine north of range five east, Boise meridian.

David S. Bingham: The southeast quarter of section seventeen in township thirty-nine north of range

five east, Boise meridian.

William McMillan: The southeast quarter of section twenty-one in township thirty-nine north of range five east, Boise meridian.

Hattie Rowland: The southeast quarter of the northwest quarter, the south half of the northeast quarter, and the northeast quarter of the southeast quarter of section fifteen in township thirty-eight north of range five east, Boise meridian.

William E. Helkenberg: The northwest quarter of the southwest quarter of section twenty-eight, and the northeast quarter of the southeast quarter, and the southeast quarter of the northeast quarter of section twenty-nine in township thirty-nine north of range five east, Boise meridian. [1291—961]

William Haevernick: The southeast quarter of the southeast quarter of section twenty-three, and the northeast quarter of the northeast quarter of section twenty-six in township thirty-seven north of range two east, Boise meridian.

Alma Haevernick: The southwest quarter of the northeast quarter of section twenty-six in township thirty-seven north of range two east, Boise meridian.

Geary Van Artsdalen: The northeast quarter of section twenty-five in township thirty-seven, north of range five east, Boise meridian.

Robert O. Waldman: Lots two, three, six and seven of section thirty in township thirty-eight north of range two east, Boise meridian.

All of said lands being in the Lewiston Idaho land

district and in Nez Perce County, in the State and District of Idaho.

GEORGE W. WICKERSHAM,
Attorney General of the United States, Solicitor for
Complainant.

Dated September —, 1909.

Filed for record Sept. 7th, A. D. 1909, at 9 o'clock
A. M. Request of P. Gordon.

W. L. GIFFORD,
Recorder.
By C. L. Swormstede,
Deputy.

Fees \$4.00." [1292—962]

**[Offer of Notice of Lis Pendens Dated September
7, 1909, in U. S. A. vs. Kettenbach et al.]**

Mr. GORDON.—We also offer in evidence the notice of *Lis Pendens* in equity cause, United States of America, Complainant, vs. William F. Kettenbach and others, Defendants, recorded in the office of the recorder of Nez Perce County, Idaho, September 7th, 1909, at nine o'clock A. M., in *Lis Pendens* book No. 1, at page 298, and which reads as follows:

“ #47,510. LIS PENDENS.

*In the Circuit Court of the United States, for the Dis-
trict of Idaho, Northern Division.*

THE UNITED STATES OF AMERICA,
Complainant,

vs.

WILLIAM F. KETTENBACH, GEORGE H.
KESTER, WILLIAM DWYER,
Defendants.

NOTICE OF LIS PENDENS.

Notice is hereby given that a suit in Equity has been commenced in the above-named court by the above-named complainant against the above-named defendants which suit is now pending; that the object of said suit is to vacate, annul, set aside and cancel certain United States Patents heretofore issued by the United States of America at the instance and by the procurement of the defendants William F. Kettenbach, George H. Kester and William Dwyer, to the following named persons and for the lands described and set out after and opposite each name respectively:

Charles E. Loney: Lot four and the southwest quarter of the northwest quarter and the north half of the southwest quarter of section four, in township thirty-six north of range five east, of Boise meridian.

Mary A. Loney: The northeast quarter of the northeast quarter of [1293—963] section eighteen and the west half of the northwest quarter and the northwest quarter of the southwest quarter of section seventeen in township thirty-six north of range five east of Boise meridian.

Frank J. Bonney: The northwest quarter of the southwest quarter of section thirty-four in township thirty-seven north of range five east, and the east half of the southeast quarter of section thirty-three in township thirty-seven north of range five east, and lot one of section four in township thirty-six north of range five east, all of Boise meridian.

James T. Jolly: The south half of the northeast quarter, and the east half of the southeast quarter of section four, in township thirty-six north of range five east, of Boise meridian.

Effie A. Jolly: The east half of the northwest quarter and the north half of the northeast quarter of section seventeen in township thirty-six north of range five east of Boise meridian.

Charles S. Myers: The northwest quarter of section twenty-nine in township thirty-eight north of range six east of Boise meridian.

Jannie Myers: The west half of the southwest quarter of section twenty-five in township thirty-eight north of range five east of Boise meridian.

Clinton E. Perkins: Lots three and four in section three, in township thirty-six north of range five east, and the south half of the southwest quarter of section thirty-four in township thirty-seven north of range five east of Boise meridian.

All of which said lands being in the Lewiston Idaho land district and situate in Nez Perce County in the State and District of Idaho.

GEORGE W. WICKERSHAM,
Attorney General of the United States, Solicitor for
Complainant.

Dated September —, 1909. [1294—964]

Filed for record Sept. 7th, A. D. 1909, at 9 o'clock
A. M. Request of P. Gordon.

W. L. GIFFORD,
Recorder.

By C. L. Swormstede,
Deputy.

Fees \$1.20."

Mr. GORDON.—Said *lites pendentes* being read from the original record.

Mr. TANNAHILL.—The defendants severally waive any further identification of the documents offered in evidence.

**[Stipulation That Certain Instruments were Filed
for Record.]**

Mr. GORDON.—It is stipulated and agreed by and between the parties hereto in open court that the following instruments were filed for record in the office of the County Recorder of Nez Perce County, State of Idaho, and were thereafter recorded in said Nez Perce County, State of Idaho, as follows:
[1295—965]

JOEL H. BENTON, T. & S. No. 4055.

Description: S. $\frac{1}{2}$, SW. $\frac{1}{4}$, S. $\frac{1}{2}$, SE. $\frac{1}{4}$, Sec. 15, T.
39 N., R. 3 E., B. M.

THE UNITED STATES

to

JOEL H. BENTON.

Receiver's Receipt.

Dated November 21, 1902;

Recorded April 27, 1903, in Book D-2, p. 131, at request of Shoshone Abstract Co.

JOEL H. BENTON and LIDA ALICE BENTON,
Wife,

to

C. W. ROBNETT.

Deed.

Consideration, \$1600.00.

Dated December 29, 1902; acknowledged December

1478 *The United States of America*

29, 1902, before Otto Kettenbach, N. P., Nez Perce County, Idaho.

Recorded April 27, 1903, Book 83½, p. 88, Nez Perce County, at request of Shoshone Abstract Co.

Description same as above.

Witness: Otto Kettenbach.

UNITED STATES

to

JOEL H. BENTON.

Patent.

Dated February 25, 1904.

Recorded May 9, 1906, in Book 38, p. 112, Nez Perce County, at request of Lewiston Abstract Co.

Description same as above. [1296—966]

C. W. ROBNETT and JENNIE M. ROBNETT,
Wife,

to

ELIZABETH WHITE.

Deed.

Consideration, \$1.00.

Dated July 8, 1907; acknowledged July 8, 1907, before C. H. Lingenfelter, N. P., Nez Perce County, Idaho.

Recorded July 8, 1907, Book 93, p. 480, Nez Perce County, at request Lewiston Abstract Co.

Description same as above.

Witnesses: Minnie Eichenberger, C. H. Lingenfelter.

ELIZABETH WHITE, Widow,

to

CLEARWATER TIMBER COMPANY, Corp. of
State of Washington.

Warranty Deed.

Con. \$1600.00.

Dated Sept. 4, 1907; acknowledged Sept. 4, 1907, before John D. McConkey, N. P., Nez Perce County, Idaho.

Recorded Sept. 16, 1907, Book 94, p. 58, Nez Perce County, at request T. J. Davies.

Delivered to T. J. Davies.

Witnesses: J. D. McConkey, J. F. Pickering.

UNITED STATES

vs.

WILLIAM F. KETTENBACH et al.

Lis Pendens.

Recorded Oct. 16, 1907. Book 1, p. 211, Nez Perce County.

Description same as above and other property.

[1297—967]

WILLIAM B. BENTON, T. & S. 4054.

Description: S. $\frac{1}{2}$ NW. $\frac{1}{4}$, N. $\frac{1}{2}$, SW. $\frac{1}{4}$, Sec. 15, T. 39 N., R. 3 E., B. M.

THE UNITED STATES

to

WILLIAM B. BENTON.

Receiver's Receipt.

Dated Nov. 21, 1902.

Recorded April 27, 1903, Book D-2, p. 131, Nez Perce County, at request of Shoshone Abstract Co.

WILLIAM B. BENTON

to

C. W. ROBNETT.

Deed.

Consideration, \$1600.00.

Dated Jany. —, 1902.

Acknowledged Jany. 10, 1903, before Otto Kettenbach, N. P., Nez Perce County, Idaho.

Recorded April 27, 1903, Book 83½, p. 87, Nez Perce County, at request of Shoshone Abstract Co.

Witnesses: Otto Kettenbach, E. C. Smith.

CLARENCE W. ROBNETT, and JENNIE M.
ROBNETT, Wife,

to

O. E. GUERNSEY, Dubuque, Iowa.

Mortgage, \$125,00.

Dated March 15, 1904.

Acknowledged March 15, 1904, before Jno. E. Nickerson, N. P., Nez Perce County, Idaho.

Recorded March 21, 1904, Book 76, P. 532, Nez Perce County, at request of Shoshone Abstract Co.

[1298—968]

Released in Book 57, p. 364; Book 59, p. 392.

UNITED STATES

to

WILLIAM B. BENTON.

Patent.

Dated Feby. 25, 1904.

Recorded May 9, 1906, Book 38, p. 111, Nez Perce County, at request Lewiston Abstract Co.

Delivered to Lewiston Abstract Co.

UNITED STATES

vs.

WILLIAM F. KETTENBACH et al.

Lis Pendens.

Recorded Oct. 16, 1907, Book 1, p. 211, records of Nez Perce County, Idaho, request U. S. Attorney.

Description same as above and other property.

C. W. ROBNETT and JENNIE M. ROBNETT,
Wife,

to

ELIZABETH WHITE.

Deed.

Consideration, \$1.00.

Dated July 8, 1907.

Acknowledged July 8, 1907, before C. H. Lingenfelter, N. P., Nez Perce County, Idaho.

Recorded July 8, 1907, Book 93, p. 490, Nez Perce County, Idaho, at request of Lewiston Abstract Co. and delivered to Lewiston Abstract Co.

Witnesses: Mamie Eichenberger, C. H. Lingenfelter.

[1299—969]

Description same as above and other property.

ELIZABETH WHITE, Widow,

to

CLEARWATER TIMBER COMPANY, a Corporation.

Warranty Deed, \$1250.00.

Dated Sept. 4, 1907.

Acknowledged Sept. 4, 1907, before John D. McConkey, N. P., Nez Perce County, Idaho.

Recorded Sept. 16, 1907, Book 94, p. 57, at request of F. J. Davies.

Description same as above and other property.

Witnesses: J. D. McConkey and J. F. Pickering.

[1300—970]

DAVID S. BINGHAM, T. & S. No. 4781.

Description: SE. $\frac{1}{4}$ of Sec. 17, T. 39 N., R. 5 E., B. M.

DAVID S. BINGHAM and LILLIAN BINGHAM,
Wife,
to

J. O'KEEFE.

Warranty Deed.

Con. \$1.00.

Dated July 26, 1904.

Acknowledged July 26, 1904, before Geo. W. Bailey,
N. P., Nez Perce County, Idaho.

Recorded Jan. 18, 1906, Book 84, p. 315, request Lewiston National Bank; delivered to Lewiston National Bank.

J. O'KEEFE and MARY E. O'KEEFE, Wife,
to

W. F. KETTENBACH and GEORGE H. KESTER.

Quitclaim Deed.

Con. \$1.00.

Dated July 30, 1904.

Acknowledged July 30, 1904, before George W. Bailey, N. P., Nez Perce County, Idaho.

Recorded Jan. 31, 1906, Book 84, p. 361, at request Lewiston National Bank.

Delivered to Lewiston National Bank.

Above described land and other property.

WILLIAM F. KETTENBACH and MARY JANE
KETTENBACH, Wife, GEORGE H. KES-
TER and EDNA P. KESTER, Wife,
to

IDAHO TRUST COMPANY, Corp.

Warranty Deed.

Con. \$1.00.

Dated July 6, 1907.

Acknowledged July 6, 1907, before Chas. L. McDon-
ald, N. P., Nez Perce County, Idaho.

Recorded July 10, 1907, Book 87, p. 537, at request
C. W. Robnett.

Above land and other property. [1301—971]

UNITED STATES

vs.

WILLIAM F. KETTENBACH et al.

Lis Pendens.

Recorded Oct. 16, 1907, Book 1, p. 211. [1302—972]

LON E. BISHOP, T. & S. No. 4392.

Description: W. $\frac{1}{2}$, SE. $\frac{1}{4}$, S. $\frac{1}{2}$, SW. $\frac{1}{4}$, Sec. 23,
T. 39 N., R. 3 E., B. M.

UNITED STATES

to

LON E. BISHOP.

Receiver's Receipt.

Dated June 17, 1903.

Recorded August 10, 1903. Book D-2, p. 185, re-
quest of George H. Kester.

LON E. BISHOP, Single,

to

WILLIAM F. KETTENBACH and GEORGE H.
KESTER.

Deed.

Consideration, \$1,000.00.

Dated June 17, 1903.

Acknowledged June 17, 1903, before H. K. Barnett,
N. P., Nez Perce County, Idaho.

Recorded August 10, 1903, Book 83½, p. 268, per re-
quest George H. Kester.

WILLIAM F. KETTENBACH and MARY JANE
KETTENBACH, Wife; GEORGE H. KES-
TER and EDNA P. KESTER, Wife,

to

IDAHO TRUST COMPANY, Corporation of
Idaho.

Warranty Deed.

Consideration, \$1.00.

Dated July 6, 1907.

Acknowledged July 6, 1907, before Chas. L. McDon-
ald, N. P., Nez Perce County, Idaho.

Recorded July 10, 1907, Book 87, p. 537, at request
of C. W. Robnett.

Delivered to Lewiston National Bank.

Description same as above and other property.

For full description of deed, see [1303—973]

UNITED STATES

vs.

WILLIAM F. KETTENBACH et al.

Lis Pendens.

Recorded Oct. 16, 1907, Book 1, p. 211. [1304—974]

CHARLES DENT, T. & S. No. 4404.

Description, N. $\frac{1}{2}$ NE. $\frac{1}{4}$, N. $\frac{1}{2}$ NW. $\frac{1}{4}$, Sec. 14, T.
39 N., R. 3 E., B. M.

UNITED STATES

to

CHARLES DENT.

Receiver's Receipt.

Dated June 23, 1903.

Recorded August 10, 1903, Book D-2, p. 186, by re-
quest George H. Kester.

CHARLES DENT, Single,
to

WILLIAM F. KETTENBACH and GEORGE H.
KESTER.

Deed.

Consideration, \$1,000.00.

Dated June 23, 1903.

Acknowledged June 23, 1903, before H. K. Barnett,
N. P., Nez Perce County, Idaho.

Recorded August 10, 1903, Book 83- $\frac{1}{2}$, p. 270, at re-
quest George H. Kester.

WILLIAM F. KETTENBACH and MARY JANE
KETTENBACH, Wife; GEORGE H. KES-
TER and EDNA P. KESTER, Wife,

to

IDAHO TRUST COMPANY, a Corporation.

Warranty Deed.

Consideration, \$1.00.

Dated July 6, 1907.

Acknowledged July 6, 1907, before Chas. L. McDonald, N. P., Nez Perce County, Idaho.

Recorded July 10, 1907, Book 87, p. 537, request of C. W. Robnett.

Delivered to Lewiston National Bank.

Above described land and other property. [1305—975]

UNITED STATES

vs.

WILLIAM F. KETTENBACH et al.

Lis Pendens.

Recorded Oct. 16, 1907, Book 1, p. 211. [1306—976]

DRURY M. GAMMON, T. & S. No. 4477.

Description: SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ Sec. 26, SW. $\frac{1}{4}$ SW. $\frac{1}{4}$ Sec. 25, N. $\frac{1}{2}$ NE. $\frac{1}{4}$ Sec. 35, T. 40 N., R. 3 E., B. M.

UNITED STATES

to

DRURY M. GAMMON.

Patent:

Dated Sept. 9, 1904.

Recorded Nov. 16, 1904, Book 91, p. 84, request Lewiston National Bank.

DRURY M. GAMMON

to

CLARENCE W. ROBNETT.

Deed.

Consideration, \$1.00.

Dated Oct. 9, 1903.

Acknowledged Oct. 9, 1903, before Jno. E. Nickerson, N. P., Nez Perce County, Idaho.

Recorded Nov. 16, 1904, Book 91, p. 84, at request
Lewiston National Bank.

CLARENCE W. ROBNETT and JENNIE M.
ROBNETT, Wife,
to

LEWISTON NATIONAL BANK,

Deed.

Consideration, \$600.00.

Dated Nov. 25, 1904.

Acknowledged Nov. 26, 1904, before John H. Sheldts,
N. P., Nez Perce County, Idaho.

Recorded Dec. 20, 1904, Book 78, p. 228, at request
C. W. Robnett.

Above described land and other property. [1307—
977]

UNITED STATES

vs.

WILLIAM F. KETTENBACH et al.

Lis Pendens.

Recorded Oct. 16, 1907, Book 1, p. 211.

LEWISTON NATIONAL BANK

to

IDAHO TRUST COMPANY.

Deed.

Consideration, \$1.00.

Dated Jan. 8, 1910.

Recorded Jan. 12, 1910, Book 103 of Deeds, p. 101,
Nez Perce County. [1308—978]

DANIEL W. GREENBERG, T. & S. No. 4780.

Description: SW. $\frac{1}{4}$ of Sec. 17, T. 39 N., R. 5 E.,
B. M.

DANIEL W. GREENBURG and VERTHA
GREENBURG, Wife,
to

W. F. KETTENBACH and GEORGE H. KES-
TER.

Deed.

Consideration, \$1.00.

Dated August 15, 1904.

Acknowledged Aug. 17, 1904, before Otto Ketten-
bach, N. P., Nez Perce County, Idaho.

Recorded Jan. 24, 1906, Book 85, p. 285, at request
George H. Kester.

Delivered to George H. Kester.

WILLIAM F. KETTENBACH and MARY JANE
KETTENBACH, Wife; GEORGE H. KES-
TER and EDNA P. KESTER, Wife,
to

IDAHO TRUST COMPANY, a Corporation.

Warranty Deed.

Consideration, \$1.00.

Dated July 6, 1907.

Acknowledged July 6, 1907, before Chas. L. McDon-

ald, N. P., Nez Perce County, Idaho.

Recorded July 10, 1907, Book 87, p. 537, at request
C. W. Robnett.

Above described land and other property.

UNITED STATES

vs.

WILLIAM F. KETTENBACH et al.

Lis Pendens.

Recorded Oct. 16, 1907, Book 1, p. 211. [1309—979]

MARTHA E. HALLETT, T. & S. No. 4079.

Description: Lots 1, 2, E. $\frac{1}{2}$ NW. $\frac{1}{4}$ Sec. 10, T.
38 N., R. 6 E., B. M.

THE UNITED STATES

to

MARTHA E. HALLETT.

Patent.

Dated December 31, 1904.

Recorded May 29, 1908, Book 40, p. 255, request
Lewiston Abstract Co.

UNITED STATES

vs.

WILLIAM F. KETTENBACH et al.

Lis Pendens.

Recorded Oct. 16, 1907, Book 1, p. 211. [1310—980]

WILLIAM HAEVERNICK T. & S. No. 4635.

ALMA HAEVERNICK, T. & S. No. 4636.

Description: SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ Sec. 23, NE. $\frac{1}{4}$ NE. $\frac{1}{4}$,
Sec. 26, T. 37 N., R. 2 E., B. M. SW. $\frac{1}{4}$ NE. $\frac{1}{4}$
Sec. 26, T. 37 N., R. 2 E., B. M.

WILLIAM HAEVERNICK and ALMA HAEV-
ERNICK,

to

FRANK W. KETTENBACH.

Warranty Deed.

Consideration, \$650.00.

Dated June 3, 1904.

Acknowledged June 14, 1907, before Ray C. Hyke,
N. P., Nez Perce County, Idaho.

Recorded June 14, 1907, Book 88, p. 574, at request
Lewiston Abstract Co.

Delivered to Lewiston Abstract Co.

FRANK W. KETTENBACH and AMY D. KET-
TENBACH,

to

CLEARWATER TIMBER CO.

Warranty Deed.

Consideration, \$800.00.

Dated June 12, 1907.

Acknowledged June 14, 1907, before Ray C. Hyke,
N. P., Nez Perce County, Idaho.

Recorded July 13, 1907, Book 88, p. 607, at request
F. J. Daviës.

UNITED STATES

vs.

WILLIAM F. KETTENBACH et al.

Lis Pendens.

Recorded Oct. 16, 1907, Book 1, p. 211.

Description: SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ Sec. 23; NE. $\frac{1}{4}$ NE. $\frac{1}{4}$
Sec. 26, T. 37 N., R. 2 E., B. M. [1311—981]

SOREN HANSEN T. & S. No. 4377.

Description: SE. $\frac{1}{4}$ Sec. 10, T. 39 N., R. 3 E., B. M.

UNITED STATES

to

SOREN HANSEN.

Receiver's Receipt.

Dated June 5, 1903.

Recorded Oct. 10, 1903, Book D-2, p. 199, Nez Perce
County, Idaho, at request of George H. Kester.

SOREN HANSEN, Single,

to

CURTIS THATCHER.

Mortgage, \$725.00.

Dated June 5, 1903.

Acknowledged June 5, 1903, before John B. Ander-
son, N. P., Nez Perce County, Idaho.

Recorded Oct. 10, 1903, Book 76, p. 483, at request
George H. Kester.

Witness: John B. Anderson.

Release, June 11, 1909, Book 61, p. 211.

UNITED STATES

vs.

WILLIAM F. KETTENBACH et al.

Lis Pendens.

Recorded Oct. 16, 1907, Book 1, p. 211.

Above described land and other property.

UNITED STATES

to

SOREN HANSEN

Patent.

Dated August 3, 1904.

Recorded May 18, 1908, Book 40, p. 232, at request
Lewiston Abstract Co. [1312—982]

SOREN HANSEN and ANNA K. HANSEN, Wife,
to
CLEARWATER TIMBER CO.

Warranty Deed, \$2,200.00.

Dated May 16, 1908.

Acknowledged May 16, 1908, before J. B. West,
N. P., Nez Perce County, Idaho.

Recorded June 11, 1909, at request W. F. Ketten-
bach, Book 97, p. 206. [1313—983]

GEORGE W. HARRINGTON T. & S. No. 4213.

Description: W. $\frac{1}{2}$ NW. $\frac{1}{4}$, NE. $\frac{1}{4}$ NW. $\frac{1}{4}$ NW.
 $\frac{1}{4}$ NE. $\frac{1}{4}$, Sec. 10, T. 36 N., R. 5 E., B. M.

UNITED STATES

to

GEORGE W. HARRINGTON.

Receiver's Receipt,

Dated February 11, 1903.

Recorded March 7, 1903, Book D-2, p. 116, at request
Security Abstract Co.

UNITED STATES

to

GEORGE W. HARRINGTON.

Patent.

Dated July 2, 1904.

Recorded January 6, 1906. Book 38, p. 200, at re-
quest Lewiston Abstract Co.

Delivered to Lewiston Abstract Co.

GEORGE W. HARRINGTON, Single,

to

BERTHA M. TURRISH (Moscow, Idaho).

Deed.

Consideration, \$1,500.00.

Dated February 12, 1903.

Acknowledged February 12, 1903, before Otto Kettenbach, N. P., Nez Perce County, Idaho.

Recorded March 7, 1903, Book 83½, p. 44, Nez Perce County.

Request Security Abstract Co. [1314—984]

UNITED STATES

vs.

WILLIAM F. KETTENBACH et al.

Lis Pendens.

Recorded Oct. 16, 1907, Book 1, p. 211.

JAMES TURRISH and BERTHA M. TURRISH,
Wife,

to

WESTERN LAND COMPANY.

Deed.

Consideration, \$1.00.

Dated August 16, 1905.

Acknowledged August 16, 1905, before R. E. Pinney,
N. P., Spokane, Washington.

Recorded August 21, 1905, Book 78, p. 626, Nez Perce
County, at request John J. Skuse.

Delivered to John J. Skuse.

Conveys W. ½ NE. ¼, NW. ¼, N. ½ SW. ¼, Sec.

10, T. 36 N., R. 5 E., B. M., and other property.

[1315—985]

WILLIAM E. HELKENBERG, T. & S. No. 5015.

Description: NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ Sec. 28, NE. $\frac{1}{4}$ SE.

$\frac{1}{4}$ SE. $\frac{1}{4}$ NE. $\frac{1}{4}$, Sec. 29 T. 39 N., R. 5 E., B. M.

UNITED STATES

to

WILLIAM E. HELKENBERG.

Receiver's Receipt.

Dated Jan. 20, 1905.

Recorded Nov. 11, 1895, Book 3, p. 283, request Lewiston Abstract Co.

Delivered to Lewiston Abstract Co.

WILLIAM E. HELKENBERG and LILLIAN
HELKENBERG

to

GEORGE H. KESTER and WILLIAM F. KETTENBACH.

Warranty Deed.

Consideration, \$900.00.

Dated October 18, 1905.

Acknowledged October 18, 1905, before Thos. Mullen,
N. P., Nez Perce County, Idaho.

Recorded Nov. 11, 1905, Book 81, p. 308, request Lewiston Abstract Co.

Delivered to Lewiston Abstract Co.

Description: NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ Sec. 28, NE. $\frac{1}{4}$ SE.

$\frac{1}{4}$, SE. $\frac{1}{4}$ NE. $\frac{1}{4}$, Sec. 29, T. 39 N., R. 5 E.,
B. M.

Witnesses: Thomas Mullen and Eugene A. Cox.

[1316—986]

WILLIAM F. KETTENBACH and MARY JANE
KETTENBACH, Wife; GEORGE H. KES-
TER and EDNA P. KESTER, wife,

to

IDAHO TRUST COMPANY, Corp.

Warranty Deed.

Consideration, \$1.00.

Dated July 6, 1907.

Acknowledged July 6, 1907, before Chas. L. McDon-
ald, N. P., Nez Perce County, Idaho.

Recorded July 10, 1907, Book 87, p. 537, request C.
W. Robnett.

Delivered to Lewiston National Bank.

UNITED STATES

vs.

WILLIAM F. KETTENBACH et al.

Lis Pendens.

Recorded Oct. 16, 1907, Book 1, p. 211. [1317—987]

EDWARD M. HYDE, T. & S. No. 4412.

Description: NW. $\frac{1}{4}$ of Sec. 22, T. 39 N., R. 3 E.,
B. M.

UNITED STATES

to

EDWARD M. HYDE.

Receiver's Receipt.

Dated June 26, 1903.

Recorded August 10, 1903, Book D-2, p. 184, request
George H. Kester.

EDWARD M. HYDE and MAUDE HYDE, Wife,
to

WILLIAM F. KETTENBACH and GEORGE H.
KESTER.

Deed.

Consideration, \$1.00.

Dated June 26, 1903.

Acknowledged June 26, 1903, before Jno. E. Nickerson, N. P., Nez Perce County, Idaho.

Recorded August 10, 1903, Book 83½, p. 265, request George H. Kester.

WILLIAM F. KETTENBACH and MARY JANE
KETTENBACH, Wife, GEORGE H. KESTER and EDNA P. KESTER, Wife,
to

IDAHO TRUST COMPANY, Corp.

Warranty Deed.

Consideration, \$1.00.

Dated July 6, 1907.

Acknowledged July 6, 1907, before Chas. L. McDonald, N. P., Nez Perce County, Idaho.

Recorded July 10, 1907, Book 87, p. 537, request C. W. Robnett.

Delivered to Lewiston National Bank.

Land above described and other property. [1318—
988]

UNITED STATES

vs.

WILLIAM F. KETTENBACH, et al.

Lis Pendens.

Recorded October 16, 1907, Book 1, p. 211. [1319—989]

FRANCES A. JUSTICE, T. & S. No. 4771.

Description: Lots 3, 4, E. $\frac{1}{2}$ SW. $\frac{1}{4}$, Sec. 19, T. 38
N., R. 6 E., B. M.

UNITED STATES

to

FRANCES A. JUSTICE.

Receiver's Receipt.

Dated July 13, 1904.

Recorded March 30, 1906, Book 3, p. 307, request
Lewiston Abstract Co.

FRANCES A. JUSTICE, Widow,

to

KITTIE E. DWYER.

Deed.

Consideration, \$900.00.

Dated March 30, 1906.

Acknowledged March 30, 1906, before Thos. Mullen,
N. P., Nez Perce County, Idaho.

Recorded April 4, 1906, Book 85, p. 481, request Wm.
Dwyer.

Delivered to Wm. Dwyer.

UNITED STATES

vs.

WILLIAM F. KETTENBACH et al.

Lis Pendens.

Recorded Oct. 16, 1907, Book 1, p. 211. [1320—990]

EDNA P. KESTER, T. & S. No. 4773.

Description: N. $\frac{1}{2}$ NE. $\frac{1}{4}$, N. $\frac{1}{2}$ NW. $\frac{1}{4}$, Sec. 14, T. 38 N., R. 5 E., B. M.

UNITED STATES

vs.

WILLIAM F. KETTENBACH et al.

Lis Pendens.

Recorded Oct. 16, 1907, Book 1, p. 211.

Note: There appears to be no other instrument of record. Assessor's records show the property to be assessed in the name of Edna P. Kester. [1321—991]

ELIZABETH KETTENBACH, T. & S. No. 4774.

Description: W. $\frac{1}{2}$ NE. $\frac{1}{4}$, Sec. 13, Tp. 38 N., R. 5 E., B. M.

UNITED STATES

to

ELIZABETH KETTENBACH.

Patent.

Dated December 31, 1904.

Recorded April 18, 1908, Book 40, p. 182, request Elizabeth Kettenbach.

UNITED STATES

vs.

WILLIAM F. KETTENBACH et al.

Lis Pendens.

Recorded Oct. 16, 1907, Book 1, p. 211. [1322—992]

JOHN W. KILLINGER T. & S. No. 4357.

Description: N. $\frac{1}{2}$ SW. $\frac{1}{4}$, N. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 13, T. 39 N., R. 2 E., B. M.

UNITED STATES

to

JOHN W. KILLINGER.

Patent.

Dated August 3, 1904.

Recorded October 14, 1905, Book 38, p. 7, Nez Perce

County, request Lewiston Abstract Company.

Delivered to Lewiston Abstract Company.

JOHN W. KILLINGER, Single,

to

E. P. MANOR (Spokane, Wash.).

Mortgage. \$500.00.

Dated October 16, 1905.

Acknowledged October 16, 1905, before N. D. Walling, N. P., Spokane, Wash.

Recorded October 17, 1905, Book 74, p. 564, Nez

Perce County, request E. P. Manor.

Witnesses: N. D. Walling, C. J. Anderson.

JOHN W. KILLINGER,

to

GEO. E. THOMPSON.

Land Contract.

Consideration, \$100.00.

Dated March 2, 1907.

Recorded March 4, 1907, Book Misc. E., p. 74, Nez

Perce County, request N. D. Walling.

Delivered to N. D. Walling.

Note: Receipt for \$100.00 to apply on purchase price. Deed in escrow. [1323—993]

1500 *The United States of America*

JOHN W. KILLINGER, Single,
to
GEORGE E. THOMPSON.

Warranty Deed.

Consideration, \$1.00.

Dated July 8, 1907.

Acknowledged July 8, 1907, before N. D. Walling,
N. P., Spokane, Wash.

Recorded July 9, 1907, Book 88, p. 604, Nez Perce
County, request N. D. Walling.

Delivered to N. D. Walling.

Subject to a mortgage to E. P. Manor for \$500.00.

UNITED STATES

vs.

WILLIAM F. KETTENBACH, et al.

Lis Pendens,

Recorded October 16, 1907, Book 1, p. 211, Nez Perce
County.

Land above described and other property. [1324—
994]

WILLIAM McMILLEN T. & S. No. 4784.

Description: SE. $\frac{1}{4}$ of Sec. 21, T. 39 N., R. 5 E., B. M.

UNITED STATES

to

WILLIAM McMILLEN.

Receiver's Receipt.

Dated July 18, 1904.

Recorded April 9, 1906, Book 3, p. 309, request Lew-
iston Abstract Co.

WILLIAM McMULLAN, Single,
to
KITTIE E. DWYER.

Deed.

Consideration, \$1,450.00.

Dated April 9, 1906.

Acknowledged April 9, 1906, before J. B. West, N.
P., Nez Perce County, Idaho.

Recorded April 9, 1906, Book 85, p. 500, request Will-
iam Dwyer.

Delivered to William Dwyer.

KITTIE E. DWYER and WILLIAM DWYER,
to
LEWISTON NATIONAL BANK.

Mortgage, \$12,100.00.

Dated July 8, 1907, before Frank E. Brown, N. P.,
Clarkston, Wash.

Recorded July 10, 1907, Book 85, p. 10, request C.
W. Robnett.

Released December 21, 1907; marginal release.

Above-described land and other property. [1325—
995]

UNITED STATES

vs.

WILLIAM F. KETTENBACH, et al.

Lis Pendens.

Recorded Oct. 16, 1907, Book 1, p. 211.

WILLIAM DWYER and KITTIE E. DWYER,
to
LEWISTON NATIONAL BANK.

Mortgage, \$12,900.00.

Dated December 30, 1907.

Acknowledged Dec. 31, 1907, before Frank E. Brown,
N. P., Clarkston, Wash.

Recorded Dec. 31, 1907, Book 83½, p. 96, request F.
W. Kettenbach.

Above land and other property.

WILLIAM DWYER and KITTIE DWYER,
to

IDAHO TRUST COMPANY, Corp.

Deed.

Consideration, \$1.00.

Dated December 31, 1908.

Acknowledged December 31, 1908, before Ray C.
Hyke, N. P., Nez Perce County, Idaho.

Recorded January 4, 1909, Book 99, p. 464, request
Lewiston Abstract Co.

Above-described land and other property. [1326—
996]

GEORGE MORRISON T. & S. No. 4411.

Description: NE. ¼ Sec. 22, T. 39 N., R. 3 E., B. M.

UNITED STATES

to

GEORGE MORRISON.

Receiver's Receipt.

Dated June 26, 1903.

Recorded August 10, 1903, Book D-2, p. 184, request
George H. Kester.

GEORGE MORRISON and MARY A. MORRISON,
Wife,

to

WILLIAM F. KETTENBACH and GEORGE H.
KESTER.

Deed.

Consideration, \$1.00.

Dated June 26, 1903.

Acknowledged June 26, 1903, before Jno. E. Nickerson, N. P., Nez Perce County, Idaho.

Recorded August 10, 1903, Book 83-1/2, page 264, request George H. Kester.

WILLIAM F. KETTENBACH and MARY JANE
KETTENBACH, Wife; GEORGE H. KESTER and EDNA P. KESTER, Wife,

to

IDAHO TRUST COMPANY, Corp.

Warranty Deed.

Consideration, \$1.00.

Dated July 6, 1907.

Acknowledged July 6, 1907, before Chas. L. McDonald, N. P., Nez Perce County, Idaho.

Recorded July 10, 1907, Book 87, p. 537, request C. W. Robnett.

Delivered to Lewiston National Bank.

Above-described land and other property. [1327—
997]

UNITED STATES

to

WILLIAM F. KETTENBACH, et al.

Lis Pendens.

Recorded Oct. 16, 1907, Book 1, p. 211. [1328—
998]

JOHN E. NELSON T. & S. No. 4359.

Description: NE. $\frac{1}{4}$ Sec. 24, T. 39 N., R. 2 E., B. M.

UNITED STATES

to

JOHN E. NELSON.

Receiver's Receipt.

Dated May 22, 1903.

Recorded July 31, 1903, Book D-2, p. 179, Nez Perce
County, Idaho, request George H. Kester.

JOHN E. NELSON and ALICE MABEL NELSON,
Wife,

to

CURTIS THATCHER.

Mortgage, \$725.00.

Dated May 22, 1903.

Acknowledged May 22, 1903, before Jno. E. Nickerson,
N. P., Nez Perce County, Idaho.

Acknowledged June 1, 1903, before W. S. Macrum,
N. P., Multnomah County, Oregon.

Recorded July 31, 1903, Book 76, p. 464, Nez Perce
County, request of George H. Kester.

Witness: Jno. E. Nickerson.

UNITED STATES

vs.

WILLIAM F. KETTENBACH, et al.

Lis Pendens.

Recorded Oct. 16, 1907, Book 1, p. 211. [1329—999]

JOHN E. NELSON and ALICE M. NELSON, Wife,
to

E. W. THATCHER.

Deed.

Consideration, \$1060.00.

Dated May 18, 1908.

Acknowledged May 18, 1908, before Fred E. Butler,
N. P., Nez Perce County, Idaho.

Recorded May 20, 1908, Book 98, p. 647, Nez Perce
County, request C. T. Thatcher.

UNITED STATES

to

JOHN E. NELSON.

Patent.

Dated August 3, 1904.

Recorded May 20, 1908, Book 40, p. 243, request C.
T. Thatcher. [1330—1000]

FREDERICK W. NEWMAN T. & S. No. 4394.

Description: S. $\frac{1}{2}$ NE. $\frac{1}{4}$, E. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 23, T.
39 N., R. 3 E., B. M.

UNITED STATES

to

FREDERICK W. NEWMAN.

Receiver's Receipt.

Dated June 17, 1903.

Recorded August 10, 1903, Book D-2, p. 184, request
of George H. Kester.

FREDERICK W. NEWMAN and LOLIA NEWMAN, Wife,

to

WILLIAM F. KETTENBACH, Wife; GEORGE H. KESTER.

Deed.

Consideration, \$1,000.00.

Dated June 17, 1903.

Acknowledged June 17, 1903, before H. K. Barnett, N. P., Nez Perce County, Idaho.

Recorded August 10, 1903, Book 83-1/2, p. 266, request of George H. Kester.

WILLIAM F. KETTENBACH and MARY JANE KETTENBACH, Wife; GEORGE H. KESTER and EDNA P. KESTER, Wife,

to

IDAHO TRUST COMPANY, Corp.

Warranty Deed.

Consideration, \$1.00.

Dated July 6, 1907.

Acknowledged July 6, 1907, before Chas. L. McDonald, N. P., Nez Perce County, Idaho.

Recorded July 10, 1907, Book 87, p. 537, request of C. W. Robnett.

Delivered to Lewiston National Bank. [1331—1001]

UNITED STATES

vs.

WILLIAM F. KETTENBACH, et al.

Lis Pendens.

Recorded Oct. 16, 1907, Book 1, p. 211.

Above-described land and other property. [1332—
1002]

VAN V. ROBERTSON, T. & S. No. 4352.

Description: SW. $\frac{1}{4}$, Sec. 10, T. 39 N., R. 3 E., B. M.

UNITED STATES

to

VAN V. ROBERTSON.

Receiver's Receipt.

Dated May 20, 1903.

Recorded February 15, 1904, Book D-2, p. 238, Nez

Perce County, at request of C. W. Robnett.

VAN V. ROBERTSON and NETTIE B. ROBERT-
SON, Wife,

to

LEWISTON NATIONAL BANK, Corp.

Deed.

Consideration, \$600.00.

Dated September 27, 1904.

Acknowledged Oct. 6, 1904, before T. H. Bartlett,

N. P., Idaho County, Idaho.

Recorded Oct. 10, 1904, Book 91, p. 35, Nez Perce

County, at request of Lewiston National Bank.

VAN V. ROBERTSON and NETTIE B. ROB-
ERTSON, Wife,

to

CLARENCE W. ROBNETT.

Mortgage, \$500.00.

1508 *The United States of America*

Dated May 20, 1903.

Acknowledged May 20, 1903, before Jno. E. Nickerson, N. P., Nez Perce County, Idaho.

Recorded February 15, 1904, Book 76, p. 518, Nez Perce County, at request of C. W. Robnett.

Released in Book 78, p. 586. [1333—1003]

UNITED STATES

vs.

WILLIAM F. KETTENBACH et al.

Lis Pendens.

Recorded Oct. 16, 1907, Book 1, p. 211.

Above-described land and other property. [1334—1004]

HATTIE ROWLAND T. & S. No. 4785.

Description: SE. $\frac{1}{4}$ NW. $\frac{1}{4}$, S. $\frac{1}{2}$ NE. $\frac{1}{4}$, NE. $\frac{1}{4}$ SE. $\frac{1}{4}$, Sec. 15, T. 38 N., R. 5 E., B. M.

UNITED STATES

to

HATTIE ROWLAND.

Receiver's Receipt.

Dated July 18, 1904.

Recorded April 9, 1906, Book 3, p. 309, at request Lewiston Abstract Co.

HATTIE ROWLAND and BENJAMIN F. ROWLAND, Husband,

to

KITTIE E. DWYER.

Deed.

Consideration, \$1,150.00.

Dated April 9, 1906.

Acknowledged April 9, 1906, before Thos. Mullen,

N. P., Nez Perce County, Idaho.

Recorded in Book 85, p. 502, at request of William Dwyer.

Delivered to William Dwyer.

Witnesses: Thos. Mullen and Alex. Kasberg.

WILLIAM DWYER and KITTIE E. DWYER,
Wife,
to

LEWISTON NATIONAL BANK.

Mortgage.

\$12,900.00.

Dated December 30, 1907.

Acknowledged December 30, 1907, before Frank E. Brown, N. P., Clarkston, Wash.

Recorded December 31, 1907, Book 83, p. 96, at request of F. W. Kettenbach.

Delivered to F. W. Kettenbach.

Above-described land and other property. [1335—
1005]

KITTIE E. DWYER and WILLIAM DWYER
to

LEWISTON NATIONAL BANK.

Mortgage.

\$12,100.00.

Dated December 8, 1907.

Acknowledged July 8, 1907, before Frank E. Brown, N. P., Clarkston, Wash.

Recorded July 10, 1907, Book 85, p. 10, at request C. W. Robnett.

Delivered to Lewiston National Bank.

Above-described land and other property.

Released Dec. 21, 1907; marginal release.

WILLIAM DWYER and KITTIE E. DWYER

to

IDAHO TRUST COMPANY, Corp.

Deed.

Consideration \$1.00.

Dated December 31, 1908.

Acknowledged December 31, 1908, before Ray C.

Hyke, N. P., Nez Perce County, Idaho.

Recorded January 4, 1909, Book 99, p. 464, at request Lewiston Abstract Company.

Above described land and other property.

UNITED STATES

to

WILLIAM F. KETTENBACH et al.

Lis Pendens.

Recorded Oct. 16, 1907, Book 1, p. 211. [1336—
1006]

CHARLES SMITH, T. & S. No. 4405.

Description: NW. $\frac{1}{4}$ SW. $\frac{1}{4}$, Sec. 14, SE. $\frac{1}{4}$ NE.
 $\frac{1}{4}$, N. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 15, T. 39 N., R. 3 E., B. M.

UNITED STATES

to

CHARLES SMITH.

Receiver's Receipt.

Dated June 23, 1903.

Recorded August 10, 1903, Book D-2, p. 185, at request of George H. Kester.

CHARLES SMITH, Single,

to

WILLIAM F. KETTENBACH, and GEORGE H.
KESTER.

Deed.

Consideration, \$1,000.00.

Dated June 23, 1903.

Acknowledged June 23, 1903, before H. K. Barnett,
N. P., Nez Perce County, Idaho.

Recorded August 10, 1903, Book 83½, p. 269, at
request of George H. Kester.

WILLIAM F. KETTENBACH and MARY JANE
KETTENBACH, Wife; GEORGE H.
KESTER and EDNA P. KESTER, Wife,

to

IDAHO TRUST COMPANY, Corp.

Warranty Deed.

Consideration, \$1.00.

Dated July 6, 1907.

Acknowledged July 6, 1907, before Chas. L. McDon-
ald, N. P., Nez Perce County, Idaho.

Recorded July 10, 1907, Book 87, p. 537, at request
of C. W. Robnett.

Delivered to Lewiston National Bank.

Above-described land and other property. [1337—
1007]

UNITED STATES

vs.

WILLIAM F. KETTENBACH et al.

Lis Pendens.

Recorded Oct. 16, 1907, Book 1, p. 211. [1338—
1008]

GEARY VANARTSDALEN T. & S. No. 4641.

Description: NE. $\frac{1}{4}$ Sec. 25, T. 37 N., R. 5 E., B. M.

UNITED STATES

to

GEARY VANARTSDALEN.

Patent.

Dated November 1, 1904.

Recorded Dec. 13, 1904, Book 55, p. 382, at request
J. C. Jansen.

GEARY VANARTSDALEN, Single,

to

CLEARWATER TIMBER COMPANY (Corp. of
St. Paul, Minn.)

Warranty Deed.

Consideration, \$800.00.

Dated December 2, 1905.

Acknowledged December 13, 1905, before Fred Judd,
J. P., Nez Perce County, Idaho.

Recorded Dec. 23, 1905, Book 81, p. 399, at request
T. J. Davis, and delivered to T. J. Davis.

Witnesses: Fred H. Judd and Mrs. Clarence Judd.

UNITED STATES

to

WILLIAM F. KETTENBACH et al.

Lis Pendens.

Recorded Oct. 16, 1907, Book 1, p. 211. [1339—
1009]

PEARL WASHBURN, T. & S. No. 4306.

Description: E. $\frac{1}{2}$ SE. $\frac{1}{4}$, SE. $\frac{1}{4}$ NE. $\frac{1}{4}$, Sec. 27,
T. 40 N., R. 4 E., B. M.

UNITED STATES

to

PEARL WASHBURN.

Receiver's Receipt.

Dated April 16, 1903.

Recorded April 18, 1903, Book B-2, p. 131, at request of W. F. Kettenbach.

PEARL WASHBURN and CHARLES O. WASHBURN, Husband,

to

W. F. KETTENBACH.

Mortgage, \$400.00.

Dated April 16, 1903.

Acknowledged April 16, 1903, before H. K. Barnett, N. P., Nez Perce County, Idaho.

Recorded April 18, 1903, Book 76, p. 420, at request of W. F. Kettenbach.

Released June 5, 1907, Book 59, p. 351.

PEARL WASHBURN and CHARLES O. WASHBURN, Husband,

to

JAMES B. McGRANE.

Deed.

Consideration, \$900.00.

Dated May 23, 1906.

Acknowledged Oct. 31, 1906, before J. H. Smith, N.

1514 *The United States of America*

P., Los Angeles, Cal., and before A. W. Ewing,
N. P., Los Angeles, Cal.

Recorded Nov. 9, 1906, Book 89, p. 496, at request
J. B. McGrane.

Delivered to J. B. McGrane. [1340—1010]

UNITED STATES

to

PEARL WASHBURN.

Patent.

Dated July 2, 1904.

Recorded May 6, 1907, Book 38, p. 316, at request
Lewiston Abstract Company, and delivered to
Lewiston Abstract Co.

PEARL WASHBURN and CHARLES O. WASH-
BURN, Husband,
to

JAMES B. McGRANE.

Quitclaim Deed.

Consideration, \$1.00.

Dated May 31, 1907.

Acknowledged May 31, 1907, before J. H. Smith,
N. P., Los Angeles, Cal.

Recorded June 6, 1907, Book 86, p. 300, at request
Lewiston Abstract Co., and delivered to Lewis-
ton Abstract Co.

JAMES B. McGRANE and EDNA McGRANE,
Wife,

to

JOHN E. CHAPMAN.

Deed.

Consideration, \$7,500.00.

Dated May 8, 1907.

Acknowledged May 8, 1907, before Chas. L. McDonald, N. P., Nez Perce County, Idaho.

Recorded June 6, 1907, Book 93, p. 421, at request
Lewiston Abstract Co.

Above-described land and other property. [1341—
1011]

JOHN E. CHAPMAN, Single,

to

CLEARWATER TIMBER COMPANY, Ltd., a
Corporation.

Warranty Deed.

Consideration, \$8,650.00.

Dated June 7, 1907.

Acknowledged June 7, 1907, before Chas. L. McDonald, N. P., Nez Perce County, Idaho.

Recorded June 21, 1907, Book 88, p. 579, at request
of F. J. Davies, and delivered to F. J. Davies.

Above-described land and other property.

UNITED STATES

vs.

WILLIAM F. KETTENBACH et al.

Lis Pendens.

Recorded Oct. 16, 1907, Book 1, p. 211. [1342—
1012]

ELIZABETH WHITE, T. & S. No. 4776.

Description: S. $\frac{1}{2}$ NW. $\frac{1}{4}$, S. $\frac{1}{2}$ NE. $\frac{1}{4}$, Sec. 23,
T. 38 N., R. 5 E., B. M.

1516 *The United States of America*

UNITED STATES

to

ELIZABETH WHITE.

Receiver's Receipt.

Dated July 14, 1904.

Recorded April 27, 1906, Book 3, p. 320, at request
Lewiston National Bank.

UNITED STATES

vs.

WILLIAM F. KETTENBACH et al.

Lis Pendens.

Recorded Oct. 16, 1907, Book 1, p. 211.

UNITED STATES

to

ELIZABETH WHITE.

Patent.

Dated December 31, 1904.

Recorded Jan. 15, 1909, Book 40, p. 467, at request
Nez Perce County Abstract Co. [1343—1013]

MAMIE P. WHITE, T. & S. No. 4777.

Description: N. $\frac{1}{2}$ SW. $\frac{1}{4}$, N. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 14, T.
38 N., R. 5 E., B. M.

UNITED STATES

to

MAMIE P. WHITE.

Receiver's Receipt.

Dated July 14, 1904.

Recorded April 27, 1906, Book 3, p. 320, at request
of Lewiston National Bank.

UNITED STATES

vs.

WILLIAM F. KETTENBACH et al.

Lis Pendens.

Recorded Oct. 16, 1907, Book 1, p. 211.

UNITED STATES

to

MAMIE P. WHITE.

Patent.

Dated December 31, 1904.

Recorded Jan. 15, 1909, Book 40, p. 466, at request
Nez Perce County Abstract Co.

WILLIAM J. WHITE and MAMIE P. WHITE

to

ELIZABETH WHITE.

Deed.

Consideration \$1.00.

Dated January 13, 1909.

Acknowledged Jan. 14, 1909, before Ray C. Hyke,
N. P., Nez Perce County, Idaho.

Recorded Jan. 15, 1909, Book 99, p. 484, at request
of Nez Perce County Abstract Company.

Above-described land and other property. [1344—
1014]

WILLIAM J. WHITE, T. & S. No. 4775.

Description: S. $\frac{1}{2}$ NW. $\frac{1}{4}$, S. $\frac{1}{2}$ NE. $\frac{1}{4}$, Sec. 14, T.
38 N., R. 5 E., B. M.

UNITED STATES

to

WILLIAM J. WHITE.

Receiver's Receipt.

Dated July 14, 1904.

Recorded April 27, 1906, Book 3, p. 319, at request
Lewiston National Bank.

UNITED STATES

to

WILLIAM J. WHITE.

Patent.

Dated Dec. 31, 1904.

Recorded Jan. 15, 1909, Book 40, p. 465, at request
Nez Perce County Abstract Co.WILLIAM J. WHITE and MAMIE P. WHITE,
to

ELIZABETH WHITE.

Deed.

Consideration, \$1.00.

Dated Jan. 13, 1909.

Acknowledged Jan. 14, 1909, before Ray C. Hyke,
N. P., Nez Perce County, Idaho.Recorded Jan. 15, 1909, Book 99, p. 484, at request
Nez Perce County Abstract Co.

Above-described land and other property.

UNITED STATES

vs.

WILLIAM F. KETTENBACH et al.

Lis Pendens.

Recorded Oct. 16, 1907, Book 1, p. 211.

Above-described land and other property. [1345—
1015]

GUY L. WILSON, T. & S. No. 4770.

Description: Lots 3, 4, NE. $\frac{1}{4}$ SW. $\frac{1}{4}$, NW. $\frac{1}{4}$ SE.
 $\frac{1}{4}$, Sec. 19, T. 39 N., R. 5 E., B M.

GUY L. WILSON and ELLA J. WILSON, wife,
to

W. F. KETTENBACH and GEORGE H. KES-
TER.

Deed.

Consideration, \$1.00.

Dated July 13, 1904.

Acknowledged July 13, 1904, before Otto Ketten-
bach, N. P., Nez Perce County, Idaho.

Recorded June 24, 1907, Book 93, p. 456, at request
Lewiston National Bank.

WILLIAM F. KETTENBACH and MARY JANE
KETTENBACH, wife; GEORGE H. KES-
TER and EDNA P. KESTER, wife,

to

IDAHO TRUST COMPANY, a Corporation.

Warranty Deed.

Consideration, \$1.00.

Dated July 6, 1907.

Acknowledged July 6, 1907, before Chas. L. McDon-
ald, N. P., Nez Perce County, Idaho.

Recorded July 10, 1907, Book 87, p. 537, at request
of C. W. Robnett.

Above-described land and other property.

UNITED STATES

vs.

WILLIAM F. KETTENBACH et al.

Lis Pendens.

Recorded Oct. 16, 1907, Book 1, p. 211. [1346—1016]

Mr. TANNAHILL.—The defendants severally waive any further identification of the documents, but severally object to the admission of each, all or any of the documents in evidence, or the evidence in relation thereto, in so far as they relate to bills No. 388 and 407, upon the ground and for the reason that neither of the entries therein referred to are involved in those two particular actions. [1347—1017]

[Stipulation as to Taxes.]

Mr. TANNAHILL.—It is stipulated by and between the respective parties hereto in open court that the records of the office of the assessor and ex-officio tax collector of Nez Perce County, State of Idaho, show that the lands entered by the following named persons under the Timber and Stone Act were assessed to and the taxes thereon paid by the following named persons for the following years, respectively:

That the tract of land entered by Carrie D. Maris was assessed to Clarence W. Robnett in 1905, and the taxes thereon were paid by Clarence W. Robnett for said year; that said tract of land was assessed to Clarence W. Robnett in 1906, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Clarence W. Robnett in 1907, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kester and Ket-

tenbach in 1908, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kester and Kettenbach in 1909, and the taxes thereon were paid by Kester and Kettenbach for said year; and that said tract of land was assessed to Kester and Kettenbach for the year 1910.

That the tract of land entered by William B. Benton was assessed to Clarence W. Robnett in 1905, and the taxes thereon were paid by Clarence W. Robnett for said year; that said tract of land was assessed to Clarence W. Robnett in 1906, and the taxes thereon were paid by Clarence W. Robnett for said year; that said tract of land was assessed to Clarence W. Robnett in 1907, and the taxes thereon were paid by the Clearwater Timber Company for said year; that said tract of land was assessed to the Clearwater Timber Company in 1908, and the taxes thereon were paid by the Clearwater Timber Company for said year; that said tract of land was assessed in 1909 to the Clearwater Timber Company, and the taxes thereon were paid by the Clearwater Timber Company for said year; and that said tract of land was assessed to the [1348—1018] Clearwater Timber Company in 1910.

That the tract of land entered by Joel H. Benton was assessed to Clarence W. Robnett in 1905, and the taxes thereon were paid by Clarence W. Robnett for said year; that said tract of land was assessed to Clarence W. Robnett in 1906, and the taxes thereon paid by Clarence W. Robnett for said year; that said tract of land was assessed to Clarence W. Robnett

in 1907, and the taxes thereon paid by the Clearwater Timber Company for said year; that said tract of land was assessed to the Clearwater Timber Company in 1908, and the taxes thereon paid by the Clearwater Timber Company for said year; that said tract of land was assessed to the Clearwater Timber Company in 1909, and the taxes thereon were paid by the Clearwater Timber Company for said year; and that said tract of land was assessed to the Clearwater Timber Company in 1910.

That the tract of land entered by Henderson T. Dizney was assessed to Henderson T. Dizney for the year 1905, and the taxes thereon were paid by J. G. Fralick for said year; that said tract of land was assessed to Henderson T. Dizney in 1906, and the taxes thereon were paid by J. G. Fralick for said year; that the said tract of land was assessed to the Monarch Lumber Company for the year 1907, and the taxes thereon paid by the Monarch Lumber Company for said year; that said tract of land was assessed to the Monarch Lumber Company for the year 1908, and the taxes thereon were paid by the Milwaukee Land Company for said year; that the taxes thereon were assessed to the Milwaukee Land Company for the year 1909, and the taxes thereon paid by the Milwaukee Land Company for said year; and that said tract of land was assessed to the Milwaukee Land Company in 1910.

That the tract of land entered by George W. Harrington was assessed to George W. Harrington for the year 1905, and the taxes [1349—1019] thereon were paid by the said George W. Harrington for

said year; that said tract of land was assessed to the Western Land Company for the year 1906, and the taxes thereon were paid by the Western Land Company for said year; that said tract of land was assessed to the Western Land Company for the year 1907, and the taxes thereon paid by J. J. Turrish for said year; that said tract of land was assessed to the Western Land Company for the year 1908, and the taxes thereon were paid by the Western Land Company for said year; that said tract of land was assessed to the Western Land Company for the year 1909, and the taxes thereon were paid by the Western Land Company for said year; and that said tract of land was assessed to the Western Land Company for the year 1910.

That the tract of land entered by Van V. Robertson was assessed to Van V. Robertson for the year 1905, and the taxes thereon paid by the Lewiston National Bank for said year; that said tract of land was assessed to the Lewiston National Bank for the year 1906, and the taxes thereon were paid by the Lewiston National Bank for said year; that said tract of land was assessed to the Lewiston National Bank for the year 1907, and the taxes thereon paid by the Lewiston National Bank for said year; that said tract of land was assessed to the Lewiston National Bank for the year 1908, and the taxes thereon were paid by the Lewiston National Bank for said year; that said tract of land was assessed to the Lewiston National Bank for the year 1909, and the taxes thereon were paid by the Lewiston National Bank for said year; and that said tract of

land was assessed to the Idaho Trust Company for the year 1910.

That the tract of land entered by John E. Nelson was assessed to John E. Nelson for the year 1905, and the taxes thereon [1350—1020] were paid by C. Thatcher for said year; that said tract of land was assessed to John E. Nelson for the year 1906, and the taxes thereon paid by C. Thatcher for said year; that said tract of land was assessed to C. Thatcher for the year 1909, and the taxes thereon paid by C. Thatcher for said year; and that said tract of land was assessed to C. Thatcher for the year 1910.

That the tract of land entered by Soren Hansen was assessed to Soren Hansen for the year 1905, and the taxes thereon were paid by the Lewiston Abstract Company for said year; that said tract of land was assessed to Soren Hansen for the year 1906, and the taxes thereon paid by the Lewiston Abstract Company for said year; that said tract of land was assessed to Soren Hansen for the year 1907, and the taxes thereon paid by Soren Hansen for said year; that said tract of land was assessed to Soren Hansen for the year 1908, and the taxes thereon paid by Soren Hansen for said year; that said tract of land was assessed to William F. Kettenbach for the year 1909, and the taxes thereon paid by William F. Kettenbach for said year; and that said tract of land was assessed to William F. Kettenbach for the year 1910.

That the tract of land entered by John H. Little was assessed to John H. Little for the year 1905, and the taxes thereon paid by William F. Kettenbach for

said year; that said tract of land was assessed to William F. Kettenbach for the year 1906, and the taxes thereon paid by William F. Kettenbach for said year; that the tract of land was assessed to William F. Kettenbach for the year 1907, and the taxes thereon paid by William F. Kettenbach for said year; that said tract of land was assessed to William F. Kettenbach for the year 1908, and the taxes thereon paid by the Idaho Trust Company for said year; that said tract of land was assessed to William F. Kettenbach for the year 1909, and the taxes thereon paid by William F. Kettenbach for said year; and that said tract of land was assessed to William F. Kettenbach [1351—1021] for the year 1910.

That the tract of land entered by Ellsworth M. Harrington was assessed to Ellsworth M. Harrington for the year 1905, and the taxes thereon paid by Ellsworth M. Harrington for said year; that said tract of land was assessed to Ellsworth M. Harrington for the year 1906, and the taxes thereon paid by William F. Kettenbach for said year; that said tract of land was assessed to W. F. Kettenbach for the year 1907, and the taxes thereon paid by William F. Kettenbach for said year; that said tract of land was assessed to W. F. Kettenbach for the year 1908, and the taxes thereon were paid by the Idaho Trust Company for said year; that said tract of land was assessed to W. F. Kettenbach for the year 1909, and the taxes thereon were paid by W. F. Kettenbach for said year; and that said tract of land was assessed to W. F. Kettenbach for the year 1910.

That the tract of land entered by Wren Pierce was assessed to Wren Pierce for the year 1905, and the taxes thereon were paid by W. F. Kettenbach for said year; that said tract of land was assessed to W. F. Kettenbach for the year 1906, and the taxes thereon were paid by W. F. Kettenbach for said year; that said tract of land was assessed to W. F. Kettenbach for the year 1907, and the taxes thereon paid by W. F. Kettenbach for said year; that said tract of land was assessed to W. F. Kettenbach for the year 1908, and the taxes thereon were paid by the Idaho Trust Company for said year; that said tract of land was assessed to W. F. Kettenbach for the year 1909, and the taxes thereon were paid by W. F. Kettenbach for said year; and that said tract of land was assessed to W. F. Kettenbach for the year 1910.

That the tract of land entered by Benjamin F. Bashor was assessed to W. F. Kettenbach for the year 1906, and the taxes thereon were paid by W. F. Kettenbach for said year; that said tract of land [1352—1022] was assessed to W. F. Kettenbach for the year 1907, and the taxes thereon were paid by W. F. Kettenbach for said year; that said tract was assessed to W. F. Kettenbach for the year 1908, and the taxes thereon were paid by the Idaho Trust Company for said year; that said tract of land was assessed to W. F. Kettenbach for the year 1909, and the taxes thereon were paid by W. F. Kettenbach for said year; and that said tract of land was assessed to W. F. Kettenbach for the year 1910.

That the tract of land entered by James C. Evans was assessed to James C. Evans for the year 1905,

and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kester and Kettenbach for the year 1906, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kester and Kettenbach for the year 1907, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to the Idaho Trust Company for the year 1908, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kester and Kettenbach for the year 1909, and the taxes thereon were paid by the Idaho Trust Company for said year; and that said tract of land was assessed to the Idaho Trust Company for the year 1910.

That the tract of land entered by Pearl Washburn was assessed to the Clearwater Timber Company for the year 1908, and the taxes thereon were paid by the Clearwater Timber Company for said year; that said tract of land was assessed to the Clearwater Timber Company for the year 1909, and the taxes thereon were paid by the Clearwater Timber Company for said year; and that said tract of land was assessed to the Clearwater Timber Company for the year 1910. [1353—1023]

That the tract of land entered by Lon E. Bishop was assessed to Lon E. Bishop for the year 1905, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kester and Kettenbach for the year 1906, and the taxes thereon were paid by Kester and Ket-

tenbach for said year; that said tract of land was assessed to Kester and Kettenbach for the year 1907, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to the Idaho Trust Company for the year 1908, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kester and Kettenbach for the year 1909, and the taxes thereon were paid by the Idaho Trust Company for said year; and that said land was assessed to the Idaho Trust Company for the year 1910.

That the tract of land entered by Joseph B. Clute was assessed to Joseph B. Clute for the year 1905, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kester and Kettenbach for the year 1906, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kester and Kettenbach for the year 1907, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to the Idaho Trust Company for the year 1908, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kester and Kettenbach for the year 1909, and the taxes thereon were paid by the Idaho Trust Company for said year; and that said tract of land was assessed to the Idaho Trust Company for the year 1910.

That the tract of land entered by Frederick W. Newman was assessed to Frederick W. Newman for the year 1905, and the taxes thereon were paid by

Kester and Kettenbach for said year; that said tract of land was assessed to Kester and Kettenbach for the year 1906, [1354—1024] and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kester and Kettenbach for the year 1907, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to the Idaho Trust Company for the year 1908, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kester and Kettenbach for the year 1909, and the taxes thereon were paid by the Idaho Trust Company for said year, and that said tract of land was assessed to the Idaho Trust Company for the year 1910.

That the land entered by Francis M. Long was assessed to Francis M. Long for the year 1905, and the taxes thereon were paid by W. F. Kettenbach for said year; that said tract of land was assessed to W. F. Kettenbach for the year 1906, and the taxes thereon were paid by W. F. Kettenbach for said year; that said tract of land was assessed to W. F. Kettenbach for the year 1907, and the taxes thereon were paid by W. F. Kettenbach for said year; that said tract of land was assessed to W. F. Kettenbach for the year 1908, and the taxes thereon were paid by the Idaho Trust Company for said year; that said land was assessed to W. F. Kettenbach for the year 1909, and the taxes thereon were paid by W. F. Kettenbach for said year; and that said tract of land was assessed to W. F. Kettenbach for the year 1910.

That the land entered by John H. Long was assessed to John H. Long for the year 1905, and the

taxes thereon were paid by W. F. Kettenbach; that said tract of land was assessed to W. F. Kettenbach for the year 1906, and the taxes thereon were paid by W. F. Kettenbach for said year; that said tract of land was assessed to W. F. Kettenbach for the year 1907, and the taxes thereon were paid by W. F. Kettenbach for said year; that said tract of land was assessed to W. F. Kettenbach for the year 1908, and the taxes thereon paid by the Idaho Trust Company [1355—1025] for said year; that said tract of land was assessed to W. F. Kettenbach for the year 1909, and the taxes thereon were paid by W. F. Kettenbach for said year; and that said land was assessed to W. F. Kettenbach for the year 1910.

That the tract of land entered by Benjamin F. Long was assessed to Benjamin F. Long for the year 1905, and the taxes thereon were paid by W. F. Kettenbach for said year; that said tract of land was assessed to W. F. Kettenbach for the year 1906, and the taxes thereon were paid by W. F. Kettenbach for said year; that said tract of land was assessed to W. F. Kettenbach for the year 1907, and the taxes thereon were paid by W. F. Kettenbach for said year; that said tract of land was assessed to W. F. Kettenbach for the year 1908, and the taxes thereon were paid by the Idaho Trust Company for said year; that said tract of land was assessed to W. F. Kettenbach for the year 1909, and the taxes thereon were paid by W. F. Kettenbach for said year; and that said tract of land was assessed to W. F. Kettenbach for the year 1910.

That the tract of land entered by Charles Dent

was assessed to H. W. Dent for the year 1905, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kester and Kettenbach for the year 1906, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kester and Kettenbach for the year 1907, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to the Idaho Trust Company for the year 1908, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kester and Kettenbach for the year 1909, and the taxes thereon were paid by the Idaho Trust Company for said year; and that said tract of land was assessed to the Idaho Trust Company for the year 1910. [1356—1026]

That the tract of land entered by Charles Smith was assessed to Charles Smith for the year 1905, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kester and Kettenbach for the year 1906, and the taxes thereon were paid by said Kester and Kettenbach for said year; that said tract of land was assessed to Kester and Kettenbach for the year 1907, and the taxes thereon were paid by said Kester and Kettenbach for said year; that said tract of land was assessed to the Idaho Trust Company for the year 1908, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kester and Kettenbach for the year 1909, and the taxes thereon were paid by the Idaho Trust Company for said year; and that said tract

of land was assessed to the Idaho Trust Company for the year 1910.

That the tract of land entered by George Morrison was assessed to George Morrison for the year 1905, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kester and Kettenbach for the year 1906, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kester and Kettenbach for the year 1907, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to the Idaho Trust Company for the year 1908, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kester and Kettenbach for the year 1909, and the taxes thereon were paid by the Idaho Trust Company for said year; and that said tract of land was assessed to the Idaho Trust Company for the year 1910.

That the tract of land entered by Edward M. Hyde was assessed to Edward M. Hyde for the year 1905, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kester and Kettenbach for the year 1906, and the taxes thereon were paid by Kester and Kettenbach for said year; that [1357—1027] said tract of land was assessed to Kester and Kettenbach for the year 1907, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to the Idaho Trust Company for the year 1908, and the taxes thereon were paid by Kester and Kettenbach for said year; that

said tract of land was assessed to Kester and Kettenbach for the year 1909, and the taxes thereon were paid by the Idaho Trust Company for said year; and that said tract of land was assessed to the Idaho Trust Company for the year 1910.

That the tract of land entered by Bertsel H. Ferris was assessed to Bertsel H. Ferris for the year 1905, and the taxes thereon were paid by Bertsel H. Ferris for said year; that said tract of land was assessed to Bertsel H. Ferris in 1906, and the taxes thereon were paid by Charles L. McDonald for said year; that said tract of land was assessed to W. F. Kettenbach for the year 1907, and the taxes thereon were paid by W. F. Kettenbach for said year; that said tract of land was assessed to W. F. Kettenbach for the year 1908, and the taxes thereon were paid by the Idaho Trust Company for said year; that said tract of land was assessed to W. F. Kettenbach for the year 1909, and the taxes thereon were paid by W. F. Kettenbach for said year, and that said tract of land was assessed to W. F. Kettenbach for the year 1910.

That the tract of land entered by George Ray Robinson was assessed to George Ray Robinson for the year 1905, and the taxes thereon were paid by W. F. Kettenbach for said year; that said tract of land was assessed to W. F. Kettenbach for the year 1906, and the taxes thereon were paid by W. F. Kettenbach for said year; that said tract of land was assessed to W. F. Kettenbach for the year 1907, and the taxes thereon were paid by W. F. Kettenbach for said year; that said tract of land was assessed to W. F. Kettenbach for the year 1908, and the taxes thereon

were paid by the Idaho Trust Company for said year; that said tract of land was assessed to W. F. Kettenbach for the year [1358—1028] 1909, and the taxes thereon were paid by W. F. Kettenbach for said year; and that said tract of land was assessed to W. F. Kettenbach for the year 1910.

That the tract of land entered by Drury M. Gammon was assessed to Drury M. Gammon for the year 1905, and the taxes thereon were paid by the Lewiston National Bank for said year; that said tract of land was assessed to the Lewiston National Bank for the year 1906, and the taxes thereon were paid by the Lewiston National Bank for said year; that said tract of land was assessed to the Lewiston National Bank for the year 1907, and the taxes thereon were paid by the Lewiston National Bank for said year; that said tract of land was assessed to the Lewiston National Bank for the year 1908, and the taxes thereon were paid by the Lewiston National Bank for said year; that said tract of land was assessed to the Lewiston National Bank for the year 1909, and the taxes thereon were paid by the Lewiston National Bank for said year; and that said tract of land was assessed to the Idaho Trust Company for the year 1910.

That the tract of land entered by Charles W. Taylor was assessed to Charles W. Taylor for the year 1905, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kester and eKttenbach for the year 1906, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land

was assessed to Kester and Kettenbach for the year 1907, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kester and Kettenbach for the year 1908, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kester and Kettenbach for the year 1909, and the taxes thereon were paid by Kester and Kettenbach for said year; and that said tract of land was assessed to the Idaho Trust Company for the year 1910. [1359—1029]

That the land entered by Jackson O'Keefe was assessed to Jackson O'Keefe for the year 1905, and the taxes thereon paid by Jackson O'Keefe for said year; that said tract of land was assessed to Jackson O'Keefe for the year 1906, and the taxes thereon paid by Kester and Kettenbach for said year; that said tract of land was assessed to the Western Land Company for the year 1907, and the taxes thereon were paid by F. M. Saling for said year; that said tract of land was assessed to Kester and Kettenbach for the year 1908, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kester and Kettenbach for the year 1909, and the taxes thereon were paid by Kester and Kettenbach for said year; and that said tract of land was assessed to the Idaho Trust Company for the year 1910.

That the tract of land entered by Edgar J. Taylor was assessed to Edgar J. Taylor for the year 1905, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was

assessed to Kester and Kettenbach for the year 1906, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kester and Kettenbach for the year 1907, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kester and Kettenbach for the year 1908, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kester and Kettenbach for the year 1909, and the taxes thereon were paid by Kester and Kettenbach for said year; and that said tract of land was assessed to the Idaho Trust Company for the year 1910.

That the tract of land entered by Joseph H. Prentice was assessed to Joseph H. Prentice for the year 1905, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kester and Kettenbach for the year 1906, and the taxes [1360—1030] thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kester and Kettenbach for the year 1907 and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kester and Kettenbach for the year 1908, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kester and Kettenbach for the year 1909, and the taxes thereon were paid by Kester and Kettenbach for said year; that said land was assessed to the Idaho Trust Company for the year 1910.

That the tract of land entered by George H. Kester was assessed to George H. Kester for the year 1905, and the taxes thereon were paid by the Lewiston National Bank for said year; that said tract of land was assessed to George H. Kester for the year 1906, and the taxes thereon were paid by George H. Kester for said year; that said tract of land was assessed to George H. Kester for the year 1907, and the taxes thereon were paid by George H. Kester for said year; that said tract of land was assessed to the Idaho Trust Company for the year 1908, and the taxes thereon were paid by the Idaho Trust Company for said year; that said tract of land was assessed to the Idaho Trust Company for the year 1909, and the taxes thereon were paid by the Idaho Trust Company for said year; and that said tract of land was assessed to the Idaho Trust Company for the year 1910.

That the tract of land entered by Guy L. Wilson was assessed to Guy L. Wilson for the year 1905, and the taxes thereon were paid by Raymond Allen (delinquent) for said year; that said tract of land was assessed to Guy L. Wilson for the year 1906, and the taxes thereon were paid by W. F. Kettenbach for said year; that said tract of land was assessed to Guy L. Wilson for the year 1907, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to the Idaho Trust Company for the year 1908, and the taxes [1361—1031] thereon were paid by the Idaho Trust Company for said year; that said tract of land was assessed to the Idaho Trust Company for the year 1909, and the taxes thereon were paid by the Idaho

Trust Company for said year, and that said tract of land was assessed to the Idaho Trust Company for the year 1910.

The tract of land entered by Frances A. Justice was assessed to Frances A. Justice for the year 1905, and the taxes thereon were paid by Kittie E. Dwyer for said year; that said tract of land was assessed to Frances A. Justice for the year 1906, and the taxes thereon were paid by Kittie E. Dwyer for said year; that said tract of land was assessed to Frances A. Justice for the year 1907, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kittie E. Dwyer for the year 1908, and the taxes thereon were paid by Kittie E. Dwyer for said year; that said tract of land was assessed to Kittie E. Dwyer for the year 1909, and the taxes thereon were paid by the Idaho Trust Company for said year; and that said tract of land was assessed to Kittie E. Dwyer for the year 1910.

That the tract of land entered by Fred E. Justice was assessed to Fred E. Justice for the year 1905, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Fred E. Justice for the year 1906, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Fred E. Justice for the year 1907, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kester and Kettenbach for the year 1908, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kester

and Kettenbach for the year 1909, and the taxes thereon were paid by Kester and Kettenbach for said year; and that said tract of land was assessed to the Idaho Trust Company for the year 1910. [1362—1032]

That the tract of land entered by Edna P. Kester was assessed to Edna P. Kester for the year 1905, and the taxes were paid by Edna P. Kester for said year; that said land was assessed to Edna P. Kester for the year 1906, and the taxes thereon were paid by W. F. Kettenbach; that said tract of land was assessed to Edna P. Kester for the year 1907, and the taxes thereon were paid by Edna P. Kester for said year; the said tract of land was assessed to Edna P. Kester for the year 1908, and the taxes thereon were paid by Edna P. Kester for said year; that said tract of land was assessed to Edna P. Kester for the year 1909, and the taxes thereon were paid by Edna P. Kester for said year; and that said tract of land was assessed to Edna P. Kester for the year 1910.

That the tract of land entered by Elizabeth Kettenbach was assessed to Elizabeth Kettenbach for the year 1905, and the taxes thereon were paid by Elizabeth Kettenbach for said year; that said tract of land was assessed to Elizabeth Kettenbach for the year 1906, and the taxes thereon for said year were paid by the Idaho Trust Company; that said tract of land was assessed in the year 1907 to Elizabeth Kettenbach, and the taxes thereon were paid by the Idaho Trust Company for said year; that said tract of land was assessed to Elizabeth Kettenbach for the year 1908, and the taxes thereon were paid by Kester and

Kettenbach for said year; that said tract of land was assessed to Elizabeth Kettenbach for the year 1909, and the taxes thereon were paid by Elizabeth Kettenbach for said year; and that said tract of land was assessed to Elizabeth Kettenbach for the year 1910.

That the land entered by William J. White was assessed to William J. White for the year 1909, and the taxes thereon were paid by the Lewiston National Bank for said year; that said land was assessed to William J. White for the year 1906, and the taxes thereon [1363—1033] were paid by William J. White for said year; that said tract of land was assessed to William J. White for the year 1907, and the taxes thereon were paid by the Lewiston National Bank for said year; that said tract of land was assessed to William J. White for the year 1908, and the taxes thereon were paid by William J. White for said year; that said land was assessed to William J. White for the year 1909, and the taxes thereon were paid by Elizabeth White for said year; and that said tract of land was assessed to Elizabeth White for the year 1910.

. That the tract of land entered by Elizabeth White was assessed to Elizabeth White in 1905, and the taxes thereon were paid by the Lewiston National Bank for said year; that said tract of land was assessed to Elizabeth White in 1906, and the taxes thereon were paid by the Lewiston National Bank for said year; that said tract of land was assessed to Elizabeth White in 1907, and the taxes thereon were paid by the Lewiston National Bank for said year; that said tract of land was assessed to Elizabeth in 1908, and

the taxes thereon were paid by Elizabeth White for said year; that said land was assessed to Elizabeth White in 1909, and the taxes thereon were paid by Elizabeth White for said year; and that said tract of land was assessed to Elizabeth White for the year 1910.

That the tract of land entered by Mamie P. White was assessed to Mamie P. White in 1905, and the taxes thereon were paid by the Lewiston National Bank for said year; that said tract of land was assessed to Mamie P. White for the year 1906, and the taxes thereon were paid by W. J. White for said year; that said tract of land was assessed to Mamie P. White for the year 1907, and the taxes thereon were paid by the Lewiston National Bank for said year; that said tract of land was assessed for the year 1908 to Mamie P. White, and the taxes thereon were paid by Mamie P. White for said year; that said tract of [1364—1034] land was assessed to Mamie P. White for the year 1909, and the taxes thereon were paid by Elizabeth White for said year; and that said tract of land was assessed to Elizabeth White for the year 1910.

That the tract of land entered by Martha E. Hallett was assessed to her for the years 1905, 1906, 1907, 1908, 1909, and 1910, but no taxes were paid by her, on account of widow's exemption.

That the tract of land entered by Daniel W. Greenburg was assessed to Daniel W. Greenburg for the year 1905, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kester and Kettenbach for

the year 1906, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kester and Kettenbach for the year 1907, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to the Idaho Trust Company for the year 1908, and the taxes thereon were paid by the Idaho Trust Company for said year; that said tract of land was assessed to the Idaho Trust Company for the year 1909, and the taxes thereon were paid by the Idaho Trust Company for said year; and that said tract of land was assessed to the Idaho Trust Company for the year 1910.

That the tract of land entered by David S. Bingham was assessed to David S. Bingham for the year 1905, and the taxes thereon were paid by Kester and Kettenbach for said year; that the said tract of land was assessed to Kester and Kettenbach for the year 1906, and the taxes thereon were paid by Kester and Kettenbach for the year 1906; that said tract of land was assessed to Kester and Kettenbach for the year 1907, and the taxes thereon were paid by Kester and Kettenbach for said year; that said land was assessed to the Idaho Trust Company in the year 1908, and the taxes thereon were paid by the Idaho Trust Company for said year; that said tract of land was assessed to the Idaho Trust [1365—1035] Company for the year 1909, and the taxes thereon were paid by the Idaho Trust Company for said year; and that said tract of land was assessed to the Idaho Trust Company for the year 1910.

That the tract of land entered by William McMil-

lan was assessed to William McMillan for the year 1905, and the taxes thereon were paid by the Lewiston Abstract Company for said year; that said tract of land was assessed to William McMillan for the year 1906, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to William McMillan for the year 1907, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kittie E. Dwyer for the year 1908, and the taxes thereon were paid by Kittie E. Dwyer for said year; that said tract of land was assessed to Kittie E. Dwyer for the year 1909, and the taxes thereon were paid by the Idaho Trust Company for said year; that said land was assessed to Kittie E. Dwyer for the year 1910.

That the land entered by Hattie Rowland was assessed to Hattie Rowland for the year 1905, and the taxes thereon were paid by the Lewiston Abstract Company for said year; that said tract of land was assessed to Hattie Rowland for the year 1906, and the taxes thereon were paid by Kittie E. Dwyer for said year; that the said tract of land was assessed to Hattie Rowland for the year 1907, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kittie E. Dwyer for the year 1908, and the taxes thereon were paid by Kittie E. Dwyer for said year; that said tract of land was assessed to Kittie E. Dwyer for the year 1909, and the taxes thereon were paid by the Idaho Trust Company for said year; and that said tract was assessed to Kittie E. Dwyer for

the year 1910. [1366—1036]

That the tract of land entered by Edgar H. Dammarell was assessed to Edgar H. Dammarell in the year 1905, and the taxes thereon were paid by Kester and Kettenbach for said year; that the south half was assessed to the Clearwater Timber Company for the year 1906, and the taxes thereon were paid by the Clearwater Timber Company for said year; that the remainder of the land embraced in said entry was assessed to the North Fork Lumber Company in 1906, and the taxes thereon were paid by D. Cameron for said year; that the south half of said tract was assessed to the Clearwater Timber Company for the year 1907, and the taxes thereon were paid by the Clearwater Timber Company for said year; that the remainder of the land embraced in said entry was assessed to the North Fork Lumber Company for the year 1907, and the taxes thereon were paid by the North Fork Lumber Company for said year; that said tract of land was assessed to Kester and Kettenbach for the year 1908, and the taxes thereon were paid by Kester and Kettenbach for said year; that the south half of said tract of land was assessed to the Clearwater Timber Company for the year 1909, and the taxes thereon were paid by the Clearwater Timber Company for said year; that the remainder of said entry was assessed to the North Fork Lumber Company for the year 1909, and the taxes thereon were paid by D. Cameron for said year; and that said tract of land was assessed to the Idaho Trust Company for the year 1910.

That the tract of land entered by William Helken-

berg was assessed to William Helkenberg for the year 1905, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kester and Kettenbach in 1906, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kester and Kettenbach in 1907, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to the Idaho Trust Company in 1908, and the taxes thereon were paid by the Clearwater Timber Company for [1367—1037] said year; that said land was assessed to the Idaho Trust Company for the year 1909, and the taxes thereon were paid by the Idaho Trust Company for said year; and that said tract of land was assessed to the Idaho Trust Company for the year 1910.

That the tract of land entered by William Haevernick was assessed to William Haevernick for the year 1905, and the taxes thereon were paid by F. W. Kettenbach for said year; that said tract of land was assessed to F. W. Kettenbach for the year 1907, and the taxes thereon were paid by the Idaho Trust Company for said year; that said tract of land was assessed to the Clearwater Timber Company for the year 1908, and the taxes thereon were paid by the Clearwater Timber Company for said year; that said tract of land was assessed to the Clearwater Timber Company for the year 1909, and the taxes thereon were paid by the Clearwater Timber Company for said year; and that said tract of land was

assessed to the Clearwater Timber Company for the year 1910.

That the tract of land entered by Alma Haevernicks was assessed to F. W. Kettenbach for the year 1907, and the taxes thereon were paid by the Idaho Trust Company for said year; that said tract of land was assessed to the Clearwater Timber Company for the year 1908, and the taxes thereon were paid by the Clearwater Timber Company for said year; that said tract of land was assessed to the Clearwater Timber Company for the year 1909, and the taxes thereon were paid by the Clearwater Timber Company for said year; that said tract of land was assessed to the Clearwater Timber Company for the year 1910.

That the land embraced in the entry of Geary Van Artsdalen was assessed to Geary Van Artsdalen in 1905, and the taxes thereon were paid by the Clearwater Timber Company for said year; that said [1368—1038] tract of land was assessed to the Clearwater Timber Company in 1907, and the taxes thereon were paid by the Clearwater Timber Company for said year; that said tract of land was assessed to the Clearwater Timber Company for the year 1908, and the taxes thereon were paid by the Clearwater Timber Company for said year; that said tract of land was assessed to the Clearwater Timber Company for the year 1909, and the taxes thereon were paid by the Clearwater Timber Company for said year; and that said tract of land was assessed to the Clearwater Timber Company for the year 1910.

That the tract of land embraced in the entry of Robert O. Waldman was assessed to Clarence W. Robnett in 1907, and the taxes thereon were paid by the Clearwater Timber Company for said year; that the said tract of land was assessed to the Lewiston National Bank in 1908, and the taxes thereon were paid by the Lewiston National Bank for said year; that the said tract of land was assessed to the Lewiston National Bank for the year 1909, and the taxes thereon were paid by the Lewiston National Bank for said year; and that said tract of land was assessed to the Idaho Trust Company in the year 1910.

That the tract of land entered by Charles E. Loney was assessed to Charles E. Loney in the year 1907, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kester and Kettenbach for the year 1908, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kester and Kettenbach for the year 1909, and the taxes thereon were paid by Kester and Kettenbach for said year; and that the said tract of land was assessed to Kester and Kettenbach for the year 1910.

That the tract of land entered by Mary A. Loney was assessed to Mary A. Loney for the year 1907, and the taxes thereon were paid by [1369—1039] Kester and Kettenbach for said year; that said tract of land was assessed to Kester and Kettenbach for the year 1908, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kester and Kettenbach for

the year 1909, and the taxes thereon were paid by Kester and Kettenbach for the said year; and that said land was assessed to Kester and Kettenbach for the year 1910.

That the tract of land entered by Frank J. Bonney was assessed to Frank J. Bonney for the year 1907, and the taxes thereon were paid by Kester and Kettenbach for said year; that the said tract of land was assessed to Kester and Kettenbach for the year 1908, and the taxes thereon were paid by Kester and Kettenbach for said year; that the said tract of land was assessed to Kester and Kettenbach for the year 1909, and the taxes thereon were paid by Kester and Kettenbach for said year; and the said tract of land was assessed to Kester and Kettenbach for the year 1910.

That the tract of land entered by James T. Jolly was assessed to James T. Jolley in 1907, and the taxes thereon were paid by Kester and Kettenbach for said year; that the said tract of land was assessed to Kester and Kettenbach for the year 1908, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kester and Kettenbach for the year 1909, and the taxes thereon were paid by Kester and Kettenbach for the said year; and that said tract of land was assessed to Kester and Kettenbach for the year 1910.

That the tract of land entered by Effie A. Jolly was assessed to Effie A. Jolley for the year 1907, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was as-

sessed to Kester and Kettenbach for the year 1908, and the taxes [1370—1040] thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kester and Kettenbach for the year 1909, and the taxes thereon were paid by Kester and Kettenbach for said year; and the said tract of land was assessed to Kester and Kettenbach for the year 1910.

That the tract of land entered by Charles S. Myers was assessed to Charles S. Myers in 1906, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Charles S. Myers for the year 1907, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kester and Kettenbach for the year 1908, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kester and Kettenbach in the year 1909, and the taxes thereon were paid by Kester and Kettenbach for said year; and that said tract of land was assessed to the Idaho Trust Company for the year 1910.

That the tract of land entered by Jannie Myers was assessed to Kester and Kettenbach for the year 1908, and the taxes thereon were paid by Kester and Kettenbach for said year; that said tract of land was assessed to Kester and Kettenbach in the year 1909, and the taxes thereon were paid by Kester and Kettenbach for said year; and that said tract of land was assessed to the Idaho Trust Company for the year 1910.

That the tract of land entered by Clinton E. Perkins was assessed to Clinton E. Perkins in 1907, and the taxes thereon were paid by Kester and Kettenbach for said year; that the tract of land above mentioned was assessed to Kester and Kettenbach in 1908, and the taxes thereon were paid by Kester and Kettenbach for said year; that the said tract of land was assessed to Kester and Kettenbach in 1909, and [1371—1041] the taxes thereon were paid by Kester and Kettenbach for said year; and that the said tract of land was assessed to Kester and Kettenbach for the year 1910. [1372—1042]

[Stipulation as to Surveys.]

Mr. GORDON.—It is further stipulated by and between the parties hereto in open court that the township lines of township 36 north of range 5 east, Boise meridian, were surveyed July 29, 1883; that the subdivision lines were surveyed July 30th to August 9th, 1883; that the plat of said surveys was received at the land office at Lewiston, Idaho, August 28th, 1884; that the plat was filed in said office on October 22, 1884; that the state filed its selection in said township October 27, 1893, and that said selection was approved by the Commissioner of the general land office, November 19, 1896.

It is further stipulated by and between the parties hereto in open court that the township lines of township 37 north of range 5 east, Boise meridian, were surveyed June 20th to July 1st, 1900; that the subdivision lines of said township were surveyed July 2d to July 31st, 1900; that the standard lines of said

township were surveyed July 8th to July 26th, 1900; another standard surveyed July 15th to July 17th, 1883; that the plat of said township was received at the Lewiston land office February 24th, 1902, and filed in said office April 17th, 1902.

It is further stipulated by and between the parties hereto in open court that the township lines of township 38 north of range 5 east, Boise meridian, were surveyed June 15th to June 17th, 1902; that the subdivision lines of said township were surveyed June 18th to July 11th, 1902; that the parallel line of said township was surveyed September 15th to September 18th, 1901; that the connection lines of said township were surveyed June 17th to July 11th, 1902; that the south and west boundary lines of said township were surveyed June 29th to August 21st, 1900; that the plat of said survey was received at the Lewiston land office January 22d, 1904, and filed in said office February 24th, 1904.

It is further stipulated by and between the parties hereto in open court that the east township lines of township 38 north of range [1373—1043] 2 east, Boise meridian, were surveyed June 25th to June 28th, 1900; that the subdivision lines of said township were surveyed June 29th to August 10th, 1900; that the meander lines of the survey of said township were surveyed July 8th to August 6th, 1900; that the connection lines of the survey of said township were surveyed June 28th to August 10th, 1900; that the west boundary line of the survey of said township was surveyed June 31 to August 9, 1900; that the west boundary line of the survey of said

township was surveyed July 8th and 9th, 1893; that the survey of the standard parallel line of said township was surveyed June 2d to June 5th, 1893; that the south boundary of said township was surveyed August 4th and 5th, 1898; that the plat of said survey was received at the Lewiston land office February 24th, 1902, and filed in said office April 10th, 1902.

It is further stipulated by and between the parties hereto in open court that the township lines of township 39 north, range 5 east, Boise meridian, were surveyed July 12th to July 20th, 1902; that the subdivision lines of said township were surveyed July 20th to August 11th, 1902; that the connection lines of said township were surveyed July 14th to July 20th, 1902; that the standard parallel lines of said township were surveyed September 15th to 17th, 1901; and that the plat of said survey was received at the Lewiston land office January 22d, 1904, and filed in said office February 24th, 1904.

It is further stipulated by and between the parties hereto in open court that the township lines of township 38 north, range 6 east, Boise meridian, were surveyed June 15th to June 19th, 1902; that the subdivision lines of said township were surveyed June 20th to July 13th, 1902; that the connection lines of said township were surveyed June 17th to July 13th, 1902; that the standard parallel lines of said township were surveyed September 18th and 19th, 1901; and that the plat of the survey of said township was received at the Lewiston land office January 22d,

1904, and filed in said office February 24th, [1374—1044] 1904.

It is further stipulated by and between the parties hereto, in open court, that the east and south township lines of township 39 north, range 3 east, Boise meridian, were surveyed August 18th to 26th, 1896; that the subdivision lines of said township were surveyed August 26th to September 18th, 1896; that the meander lines of said township were surveyed September 24th, 1896; that the north boundary line of said township was surveyed July 5th to July 8th, 1895; that the west boundary line of said township was surveyed September 14th to September 18th, 1893; and that the plat of said survey was received at the Lewiston land office December 9th, 1897, and filed in said office January 19th, 1898.

It is further stipulated by and between the parties hereto, in open court, that the township lines of township 40 north, range 3 east, Boise meridian, were surveyed July 3d to July 8th, 1895; that the subdivision lines of said township were surveyed August 5th to August 22d, 1895; that the connection lines of said township were surveyed July 3d to August 22d, 1895; that the west boundary line of said township was surveyed June 29th to July 1st, 1895; that the standard parallel lines of said township were surveyed July 19th to July 21st, 1895; and that the plat of said survey was received at the Lewiston land office December 14th, 1896, and filed in said office February 13th, 1897.

It is further stipulated by and between counsel, in open court, that the township lines of township

40 north, range 4 east, Boise meridian, were surveyed September 23d to 27th, 1896; that the subdivision lines of said township were surveyed September 27th to October 26th, 1896; that the meander lines of said township were surveyed October 28th to November 1st, 1896; that the connection lines of said township were surveyed September 23d to October 26th, 1896; that the standard parallel lines of said township were surveyed [1375—1045] September 19th to September 22d, 1896; that the north boundary line of said township was surveyed July 3d and 4th, 1895; and that the plat of said survey was received at the Lewiston land office June 3d, 1898, and filed in said office September 1st, 1898.

It is further stipulated by and between the parties hereto, in open court, that the township lines of township 40 north, range 1 west, were surveyed June 30th, 1891, and June 8th, 1892; that the subdivision lines of said township were surveyed July 8th, 1891, and June 4th, 1892; and that the plat of a portion of said survey was received at the Lewiston land office November 19th, 1892, and of the remainder of the township October 25th, 1900, and filed in said office December 5th, 1900.

It is further stipulated by and between the parties hereto, in open court, that the north and west boundary lines of the survey of township 42 north, range 1 west, Boise meridian, were surveyed October 27th, 1897; that the subdivision lines of said township were surveyed October 28th, 1897, and May 25th, 1898; that the south boundary line of said township was surveyed July 1st and 2d, 1896; that

the Boise meridian was surveyed May 27th to 29th, 1883; and that the plat of the survey of said township was received at the Lewiston land office August 25th, 1898, and filed in said office October 5th, 1898.

It is further stipulated by and between the parties hereto, in open court, that the north and west township lines of township 37 north, range 2 east, Boise meridian, were surveyed August 1st to 5th, 1898; that the subdivision lines of said township were surveyed August 9th to August 27th, 1898; that the meander lines of said township were surveyed August 27th and 28th, 1898; that the connection lines of said township were surveyed August 1st to 26th, 1898; that the east boundary line of said township was surveyed [1376—1046] August 5th to August 8th, 1898; that the standard parallel lines of said township were surveyed July 24th to 25th, and August 17th, 1883; and resurveyed July 24th to 28th, 1870; and that the plat of said survey was received at the Lewiston land office March 23d, 1900, and filed in said office April 25th, 1900.

It is further stipulated by and between the parties hereto, in open court, that the subdivision lines of township 39 north, range 2 east, Boise meridian, were surveyed September 22d to 29th, 1893; that the standard parallel lines of said township were surveyed June 2d to June 5th, 1893; and that the plat of the said survey was filed in the Lewiston land office July 2d, 1894.

It is further stipulated by and between the parties hereto, in open court, that the township lines of

township 33 north, range 5 east, Boise meridian, were surveyed June 22d and 23d, 1880; that the subdivision lines of said township were surveyed June 25th to July 3d, 1880; and that the plat of said survey was received and filed in the Lewiston land office October 28th, 1880.

It is further stipulated by and between the parties hereto, in open court, that the north, east, and west township lines of township 39 north, range 6 east, Boise meridian, were surveyed July 13th to July 19th, 1902; that the subdivision lines of said township were surveyed July 20th to August 11th, 1902; that the standard parallel lines of said township were surveyed September 18th and 19th, 1901; and that the plat of said survey was received at the Lewiston land office January 22d, 1904, and filed in said office February 24th, 1904.

It is further stipulated by and between the parties hereto, in open court, that the south and east township lines of township 40 north, range 5 east, were surveyed July 19th to August 13th, 1902; that the subdivision lines of said township were surveyed August 14th to September 15th, 1902; that the meander lines of said township [1377—1047] were surveyed September 5th and 6th, 1902; that the connection lines of said township were surveyed August 13th to September 5th, 1902; that the standard parallel lines of said township were surveyed September 20th to September 30th, 1901; that the west boundary line of said township was surveyed September 22d to September 24th, 1896; and that the plat of said survey was received at the Lewis-

(Testimony of Miss Elizabeth Kettenbach.)

ton land office January 22d, 1904, and filed in said office February 24th, 1904.

Mr. TANNAHILL.—The defendants severally object to the evidence, upon the ground that it is incompetent, irrelevant and immaterial, but waive any further identification of the evidence of the documents. [1378—1048]

[Testimony of Miss Elizabeth Kettenbach, for
Complainant.]

Miss ELIZABETH KETTENBACH, a witness called in behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. You are Miss Elizabeth Kettenbach?

A. Yes, sir.

Q. Where do you reside, Miss Kettenbach?

A. In Lewiston at present.

Q. And you have resided here for a number of years? A. Yes, sir, nearly eight.

Q. Are you related to the defendant William F. Kettenbach? A. I am his aunt.

Q. And are you related to Mr. Frank A. Kettenbach? A. He is my brother.

Q. Miss Kettenbach, do you remember making an entry upon a timber and stone claim in April, 1904?

A. I do.

Mr. TANNAHILL.—The defendants severally object to the introduction of any evidence of this witness in support of bills No. 388 and 407, upon the ground that the entry of the witness is not involved

(Testimony of Miss Elizabeth Kettenbach.)

in either of these actions, and her evidence in relation thereto is irrelevant, incompetent and immaterial.

Mr. GORDON.—Q. You answered “I do,” did you? A. Yes, sir.

Q. I show you timber and stone lands sworn statement of Elizabeth Kettenbach, dated April 25th, 1904, and ask you if you signed that paper and filed the same in the land office about the date it bears?

A. Yes, sir.

Q. I show you the nonmineral affidavit of the same date, and ask you if you signed that paper and filed it in the land office?

A. Yes, sir. [1379—1049]

Q. I show you the testimony of Elizabeth Kettenbach, given at the final proof, July 14th, 1904, and ask you if you signed that paper? A. I did.

Q. I show you the cross-examination of Elizabeth Kettenbach, taken at the same time, and ask you if you signed that? A. Yes, I did.

Q. Miss Kettenbach, do you remember who first spoke with you about taking up a claim under the timber act?

A. No, I don't. I remember the party going up there—planning to go—and I was very anxious to take up a claim, and I think I suggested going myself.

Q. And with whom did you go to view those claims?

A. With Mr. Kester and his wife, and Mr. and Mrs. White, and Mrs. Hallett and myself.

(Testimony of Miss Elizabeth Kettenbach.)

Q. Mrs. Hallett—were in the party.

Q. Now, do you know who made the arrangements for the party to go?

A. Why, I think Mr. Kester made the arrangements.

Q. That is George H. Kester you speak of?

A. Yes, George H. Kester, because I remember of paying him my part of the cost of the trip.

Q. Do you remember how much that was?

WITNESS (to Mr. COX).—Why, I think, Mr. Cox, you have that receipt that I got from Mr. Kester. Have you got it with you—the receipt showing the cost of the trip?

The SPECIAL EXAMINER.—Miss Kettenbach might refresh her memory from the receipt, I suppose.

Mr. GORDON.—Oh, sure.

WITNESS.—Yes. I don't remember exactly the figures, but I remember looking it up. (Mr. Cox handed a document to the witness.) Yes. It was—let's see, this is the little one that you had—oh, no. Yes, my share was \$22.25. [1380—1050]

Mr. GORDON.—Q. May I look at that please?

A. Yes, that is the amount. (The witness handed said document to Mr. Gordon, who examined the same.)

Q. Now, do you remember when you received this paper?

A. Why, it was just a short time after we returned from our trip up there; I can't tell just exactly when, but I remember paying him. It was just a little

(Testimony of Miss Elizabeth Kettenbach.)

while after we had taken the trip.

Q. Now, you went to this land in the fall before you filed, did you not? A. Yes, in October.

Q. Now, do you remember why you didn't file immediately after you had viewed the land?

A. No, I don't know why.

Q. Do you remember who advised you of the time to make your filing?

A. I couldn't tell exactly who advised me at the time, but I suppose—I wouldn't say positively who it was; it might have been some member of our party told me, but I couldn't say positively.

Q. Mr. Kester was in charge of the party, was he not?

A. Yes, he was in charge; that is, in a way. Of course, Mr. White was along, and they managed together. I don't remember really who told me about the time of the filing, but I suppose I was told at the time.

Q. Now, do you remember who prepared this sworn statement that I showed you?

A. Who prepared it?

Q. Yes. A. In the land office?

Q. Well, was it prepared in the land office?

A. Well, I don't know. I think I signed the statement in the land office—I believe I did. [1381—1051]

Q. But wasn't that paper prepared for you and you took it to the land office with you to make your application? A. Well, I don't remember.

(Testimony of Miss Elizabeth Kettenbach.)

Q. You have no recollection of where you received the paper?

A. No, I haven't. I was kind of under the impression that it was there, but I am not sure.

Q. Do you remember whether you had a description of the property and took it to some lawyer to prepare it for you, or was that attended to for you by some member of the party, or by someone else?

A. I don't remember of going to any lawyer.

Q. Do you remember of being in Mr. I. N. Smith's office?

A. Yes, I remember being in his office, but I couldn't say whether Mr. I. N. Smith filled out the papers or not; I couldn't say positively. I hadn't been here long enough to know the different—

Q. Do you remember of paying a fee for that service? A. Yes, I think there was a fee.

Q. Now, to whom did you pay that?

A. I don't remember who I paid it to; but I am quite sure there was a fee at the time.

Q. Do you remember how much the fee was that you paid?

A. It seems to me it was \$8.00 or something.

Q. No. Aren't you thinking of the fee which you paid in the land office for the filing?

A. Yes. I thought that was what you had reference to.

Q. No; I mean the fee you paid for preparing the papers? A. Oh, no; I don't remember that.

Q. Then, you did pay a fee of something like \$8.00 in the land office?

(Testimony of Miss Elizabeth Kettenbach.)

A. I think it was. I don't think it was more than that—whatever was customary.

Q. Now, did someone pay that and you settled afterwards? [1382—1052]

A. No; I paid that myself.

Q. Do you remember how long before you filed that paper you had to remain at the land office—your sworn statement?

A. Do you mean that day, how long I was there?

Q. Yes.

A. No, I couldn't say; I don't remember.

Q. You were not there all night?

A. Oh, no. No, I wasn't there all night at any time.

Q. Now, do you remember whether or not there was a large crowd at the land office that day?

A. Why, yes; there was quite a long line of people back of me and some in front of me.

Q. And do you remember whether or not the rest of the party that you went on this excursion to the timber with, were at the land office the same time you were when you made your initial filing?

A. Why, yes; I remember some of them being there. I don't know whether they were all there upon that day.

Q. Have you any distinct recollection of the time of day that you arrived at the land office when you made your filing?

A. Why, it was in the morning some time; I don't know exactly how early.

Q. And did you form in the line?

(Testimony of Miss Elizabeth Kettenbach.)

A. I did; I stood in line.

Q. And do you remember when you went to the line whether or not you took the place of somebody else in the line?

A. No, I don't remember. I was there. I don't remember of taking anyone else's place.

Q. Did you form at the end of the line, or did you get up in the middle of the line somewhere?

A. Well, I think when I got there I must have been at the end. Mrs. White and I, I remember, were together, but I don't remember of—there were quite a good many ahead of us; in fact, I don't really remember [1383—1053] whether—but I think that we must have taken our places—

Q. How is that?

A. I think we must have taken our places at the end of the line. I am not positive, though, about that; but I know there were quite a number ahead of us.

Q. But you didn't go to the land office until the morning that you made your filing?

A. No, I don't think I did. No, I didn't go until the morning I made my filing, but I wouldn't say positively, I might have been up to the land office before.

Q. Well, I don't mean if you were there at any other occasion; I mean you didn't remain there?

A. Oh, remain? No, I didn't remain there.

Q. The reason I asked you that, Miss Kettenbach, is because I understand that line formed there some time between a week and ten days before the land

(Testimony of Miss Elizabeth Kettenbach.)

office opened, and I was trying to find out—

A. No, I wasn't there. I came up there the morning of the filing.

Q. You paid no one a fee for holding your place in line for you? A. No, I didn't.

Q. Had you ever talked with Mr. Will. Kettenbach or Mr. Frank Kettenbach about the propriety of taking up a timber claim?

A. Why, they knew that I would like to take one up, just as a great many other people took up timber claims; they knew I wanted to; that it was my desire to do so.

Q. And did they arrange for a locator for you?

A. Why, Mr. Frank Kettenbach had nothing to do with it at all, and it might have been that Will. suggested Mr. Dwyer, because he was our locator.

Q. You didn't arrange for him to go over the land with you; someone else arranged that for you, did they? [1384—1054]

A. Mr. Kester had charge of the party, and he made all those arrangements.

Q. Now, before you went to the timber did you know what the location fee would be? A. I did.

Q. How much was it? A. \$100.00.

Q. Now, to whom did you pay that?

A. Mr. Dwyer.

Q. And when?

A. I paid it to him the day that we filed, I think, or when we proved up, I should say—the day we proved up.

Q. The day you made your final proof?

(Testimony of Miss Elizabeth Kettenbach.)

A. Yes, the day we made our final proof; not the day we filed.

Q. And he was there to get it—you didn't have to go and look him up?

A. Well, I don't remember whether he was right there to get it or not; but I remember paying it to him.

Q. Do you remember where it was you paid him?

A. No, I don't. It wasn't up in the land office, though, I remember that. It might have been down stairs or some place near there where I just happened to see him.

Q. Do you remember whether or not it was in the Directors' room of the bank? A. It was not.

Q. Do you remember whether it was in the bank?

A. No, I think not. I think it was in the hallway coming downstairs that he was at the foot of the stairs, but I wouldn't say positively.

Q. And did you pay him by check or in cash?

A. Cash. [1385—1055]

Q. Now, Miss Kettenbach, referring to the time that you made your final proof, do you remember how much you paid into the land office that day?

Mr. TANNAHILL.—The defendants severally object to any evidence in regard to the final proof, on the ground that it is irrelevant, incompetent and immaterial, and ask that this objection go to all the questions in relation to the final proof, without the necessity of repeating it.

Mr. GORDON.—Answer the question, please.

A. Well, I didn't quite understand that.

(Testimony of Miss Elizabeth Kettenbach.)

Q. Well, he was just making an objection.

A. Oh, I see. And what was the amount, you asked?

Q. Yes.

A. Well, four hundred and some dollars; I don't remember exactly.

Q. Do you remember whether you paid that by check or in cash? A. In cash.

Q. And do you mind telling where you received the money that was paid that day?

A. Well, I would like to make a little explanation there. The money that I intended to use in filing—in paying for this claim, was money that I inherited from my mother's estate, and I expected a certain note to be paid off at a certain time, but it wasn't, so temporarily I borrowed the money from my nephew, in whose family I was living; and so—

Q. That is William F. Kettenbach, is it?

A. Yes—I was a member of his family; and naturally when the time came and my note wasn't paid off, I asked him for a loan of five hundred and some dollars to pay this, and then as soon as my note was paid in I paid off the money, and I have the return checks and my bank statement—Mr. Cox has all those—to show just exactly what my bank account was at the time; and so just temporarily I borrowed the money, [1386—1056] and I didn't make any explanation to them at the time that I paid it, because it was really I felt money that I inherited that I wanted to use towards getting this claim, and simply because it hadn't been paid at the time it

(Testimony of Miss Elizabeth Kettenbach.)

should have been I borrowed this money for a few months from my nephew until the money was paid into the Idaho Trust Company, and then I gave him a check for it, for the full amount that I had borrowed.

Q. Then, as I understand you, this nephew you speak of is William F. Kettenbach? A. Yes, sir.

Q. And I understood you to say that you were living at his house at that time?

A. I was living as a member of his household at the time.

Q. And how long had you lived in his home?

A. Why, I came out the year before, and I had been living with him, I think,—well, I came out in February, and it was the next—a year from the next July, you know, that I proved up; it was the following April—or, in October, that I went up to the timber.

A. And you had been living at his home then about 18 months at the time you made proof?

A. Yes, I think so.

Q. And how long after that did you continue to live at his home?

A. Why, I think I was there possibly another 18 months before I finally left the home there.

Q. And the day that you made your proof you received this loan you speak of from William F. Kettenbach? A. Yes; he loaned me the money.

Q. And do you remember getting it at the bank?

A. I did; I got it at the bank.

Q. And went directly from the bank to the land

(Testimony of Miss Elizabeth Kettenbach.)

office? A. Yes. [1387—1057]

Q. And paid the money in?

A. Yes, I paid the money.

Q. Now, do you remember whether you discussed with Mr. Kettenbach at that time as to any questions that would be asked you at the land office?

A. Well, I don't remember. We probably might have discussed it, but I don't remember just what it was now. We naturally would discuss anything of that kind.

Q. Do you remember whether he had a set of the questions that would be asked you when you went to the land office?

A. No, I don't. I don't remember that.

Q. You remember when you went to the land office they asked you where you had received the money?

A. Yes, I remember that.

Q. Which you were paying into the land office?

A. Yes, sir.

Q. And how long you had had the same in your actual possession? A. Yes, sir.

Q. And do you remember the answer that you made?

A. I think I told them I inherited the money, and that's what I made this explanation, because I felt justified in doing it. It was really just a temporary loan, and that I wanted to apply this money that I had inherited on this claim, and that is why I felt—

Q. Well, here is the question:—

Mr. COX.—Pardon me a moment. Is it under-

(Testimony of Miss Elizabeth Kettenbach.)

stood that Mr. Tannahill's objection runs to all these questions?

Mr. GORDON.—Oh, yes.

Q. "Question 17. Where did you get the money with which to pay for this land, and how long have you had the same in your actual possession?" "Answer. From the sale of real estate. Six months." You remember making that answer, do you?

A. Yes, sir, I remember making that. [1388—1058]

Q. And the explanation you have given here is—

A. Yes, is the one that I wanted to make, and in fact should have made at the time; but I just thought then that I would have the money even in less time than it was paid in.

Q. Now, have you ever given anyone an option on your land? A. No, sir, I never have.

Q. Did you ever authorize anyone else to give an option on it? A. I did not.

Q. Or to try to sell it? A. Never.

Q. And you still hold the timber claim?

A. I still hold it, yes, sir.

Q. And do you hold any other timber claim except the one you filed upon?

A. No, sir. Mr. Cox has all my tax receipts there, showing that I paid the taxes on the claim.

Mr. GORDON (to Mr. COX).—Do you mind if I look at those papers which you showed me this morning?

Mr. Cox handed several papers to Mr. Gordon, who examined the same.

(Testimony of Miss Elizabeth Kettenbach.)

Mr. GORDON.—Q. Have you had an offer for your claim?

A. I never have had an offer for my claim.

Q. Mr. Dwyer gave you a receipt for the location fee, did he? A. Yes, sir.

Q. And do you remember whether he gave it to you the same day you paid him the location fee?

A. I am not sure of that, but I think it was the 14th of July.

Q. That's right; it is dated the 14th of July.

A. Well, I think that's right.

Q. Now, do you know in whose handwriting the body of that receipt is? [1389—1059]

A. No, sir, I couldn't tell.

Q. Haven't you ever seen that handwriting before? Do you know Mr. William F. Kettenbach's handwriting? A. Yes, I know his handwriting.

Q. This is the receipt that Mr. Dwyer gave you; is that correct? A. Yes, sir.

Q. And it was given you the date it bears?

A. Yes, I am quite sure it was, because I paid him, I suppose—I wouldn't say positively, but I think it must have been the day it is dated.

Q. Now, did you pay him yourself?

A. Yes, sir, I did.

Q. Or did you leave that to somebody else?

A. Oh, no. I paid Mr. Dwyer.

Q. And where has this receipt been all this time—in whose possession?

WITNESS.—Is that the one I gave you, Mr. Cox,—this one—this receipt?

(Testimony of Miss Elizabeth Kettenbach.)

Mr. COX.—Yes, I gave that to you?

Mr. GORDON.—Q. Now, do you remember when you gave it to Mr. Cox?

A. Why, I gave him a number of papers, looked up what I thought would be necessary, about the time of these suits being brought.

Q. You mean when the criminal actions were brought?

A. When I asked Mr. Cox to represent me.

Mr. GORDON.—Well, I don't know when that was.

Mr. COX.—Well, you have reference to the civil action?

WITNESS.—Yes.

Mr. GORDON.—Q. You don't remember exactly the date?

A. When were those cases brought? [1390—1060]

Q. A year ago yesterday, or about that time.

A. Well, I wouldn't say. I couldn't say positively, but it has been two years; I know that.

Q. And where did you get the receipt from, and the papers that you gave him?

A. I had them in my possession. They were my private papers.

Q. But I mean did you keep them in your own possession? A. In my own possession.

Q. Or did somebody else keep them for you?

A. Oh, no. My tax receipts and bank statements and everything that I think will be of use I have a certain place that I keep them in, and I looked over

(Testimony of Miss Elizabeth Kettenbach.)

what I thought would be necessary and turned them over to Mr. Cox.

Q. Miss Kettenbach, do your brothers address you as "Elizabeth"? A. No.

Q. What do they call you?

A. Well, "Lizzie" is what they call me, but I always went by that name, and that is the way all my letters were addressed until I became associated with the Normal School, and then I took my full name; but nearly every one wrote my name "Lizzie," and it was only the last few years, as I say, that I took my full name, but never before that. You will find in looking over the bank checks and all that that I used to sign them "Lizzie."

Mr. GORDON.—We offer in evidence the receipt identified by the witness and read the same into the record:

LEWISTON NATIONAL BANK.

Lewiston, Idaho, Jul. 14, 1904.

Received from Lizzie Kettenbach One Hundred Dollars For Location fee in Tp 38—5E.

\$100.00.

WILLIAM DWYER.

Q. You have no recollection whatever in whose handwriting the body of that receipt is? [1391—1061] A. No, I couldn't tell.

Q. Is it Mr. Frank Kettenbach's?

A. No. I am more familiar with Mr. Frank Kettenbach's handwriting than I am with Will. Kettenbach's.

Q. Is it Mr. Kester's?

A. I couldn't say. I don't know whose handwrit-

(Testimony of Miss Elizabeth Kettenbach.)

ing it is. I couldn't say. I remember of paying the location fee, but I couldn't tell whose writing it is.

Q. I show you a check drawn on the Idaho Trust Company November 12th, 1904, to the order of W. F. Kettenbach, for \$519.25, signed "Lizzie Kettenbach." A. Yes.

Q. And ask you if you signed that check?

A. I did.

Q. Now, who wrote the "W. F. Kettenbach" in there?

A. Why, I think my nephew wrote that—he must have—he probably did. I am not sure, but he must have.

Q. And that is his signature endorsed on the back of it, isn't it?

A. Yes; and that was the money that I had borrowed the day that I proved up.

Q. That was the exact amount—\$519.25?

A. Yes, sir.

Q. You didn't pay any interest at all, did you?

A. Interest for the three months?

Q. Yes.

A. I hardly think so. It would have been added to that. You can figure that out.

Q. Well, I want to know if you have any distinct recollection?

A. Well, I don't remember paying any interest, but if it was it was added to that. The full amount is four hundred and something. How much is it for a claim—four hundred and—? [1392—1062]

Q. \$400.00, I think.

(Testimony of Miss Elizabeth Kettenbach.)

A. Just an even \$400.00? There might be interest added to that.

Q. An even four hundred.

A. Well, then, the other hundred would be five hundred, and what is the amount?

Q. \$19.25?

A. \$19.25—well, then, there was some—

Q. Advertising fees?

A. Perhaps something of that kind, and there might be a little interest there; I am not sure.

Q. Well, do you remember whether the \$22.00 expense that you had on going to the timber was included in this?

A. No. I paid Mr. Kester myself right soon after we came back, and that was the October—oh, that was, I think, over a year before.

Q. Before this was?

A. Well, no, not quite; it was the following July, and I went up in October, you know, of the year before; and I paid him soon after I returned from there. As soon as I found out what it was I drew the money from the Idaho Trust and paid it to Mr. Kester.

Q. You didn't give Mr. Kettenbach a note in evidence of the money he loaned you that day?

A. No, I didn't give him my note.

Q. Now, you had some income, did you not, Miss Kettenbach? A. Oh, yes, I had.

Q. And I understand you would loan that money at times? A. Yes. Yes.

Q. And did you loan that through your nephew?

(Testimony of Miss Elizabeth Kettenbach.)

A. No. My brother had charge of my affairs.

Q. Your brother Frank?

A. Yes, in the Idaho Trust; it was handled there, and they made the loans from there, and he looked after my business. [1393—1063]

Mr. GORDON.—We offer in evidence the check that has been shown the witness, and dated November 12th, 1904, and signed “Lizzie Kettenbach,” which was identified by the witness.

Said check was marked Exhibit 41 by the Reporter.

Mr. GORDON.—We also offer in evidence the receipt that has been read into the record.

Said receipt was marked Exhibit 42 by the Reporter.

Mr. GORDON.—Q. At the time you made your proof your nephew (Mr. William F. Kettenbach) was President of the Lewiston National Bank, was he not? A. Yes.

Q. And your brother Frank W. Kettenbach was at the same time the President of the Idaho Trust Company? A. Yes, the Idaho Trust Company.

Q. Do you remember whether or not your claim was held up for some time, and that there was some trouble about getting the patent?

A. Yes, it was, just as all the others were, I think.

Q. And was any effort made by you or your attorney to hurry the issuance of the patent?

A. Well, I think there was a letter written there in regard to it, to Washington, and I think we received an answer.

Q. Do you remember who wrote the letter for you?

(Testimony of Miss Elizabeth Kettenbach.)

A. No, I don't. My brother Frank looked after it for me, but I don't remember who wrote the letter.

Mr. GORDON.—We offer in evidence the timber and stone lands sworn statement of Elizabeth Kettenbach, dated April 25th, 1904, the nonmineral affidavit, the notice for publication, dated April 25th, 1904, the testimony of Elizabeth Kettenbach given at final proof, the cross-examination of Elizabeth Kettenbach given at the same time, all of which papers have been identified by the witness, the testimony of the witnesses at final proof, and the cross-examination of them, the [1394—1064] receiver's receipt and the register's certificate, dated July 14th, 1904, a certified copy of the patent issued December 31st, 1904, to Elizabeth Kettenbach, all relating to the entry of the west half of the northeast quarter and the west half of the southeast quarter of section 13, in township 38 north, of range 5 east, Boise meridian.

Mr. TANNAHILL.—The defendants severally waive any further identification of the papers, but severally object to the admission of any of the papers in evidence in support of bills or actions No. 388 or 407, upon the ground and for the reason that the entry of the witness is not involved in either of these actions, and said papers are irrelevant and immaterial. And the defendants further severally object to the admission in evidence of any of the final proof papers, especially the testimony of claimant on final proof, and the cross-examination of claimant on final proof, the testimony of the witness Edwin Bliss on final proof, and the cross-examination of the wit-

(Testimony of Miss Elizabeth Kettenbach.)

ness Edwin Bliss on final proof, the testimony of the witness William Dwyer on final proof, and the cross-examination of the witness William Dwyer on final proof, and the proof of publication, upon the ground that they are matters relating to the final proof, occurring long after the filing of the sworn statement, and they are irrelevant and immaterial.

Said papers were thereupon marked by the Reporter as Exhibits 43, 43A, 43B, 43C, 43D, 43E, 43F, 43G, 43H, 43I, 43J, 43K, 43L, and 43M.

Cross-examination.

(By Mr. COX.)

Q. You came to Lewiston, Idaho, to live, in 1903?

A. Yes.

Q. Where was your home prior to coming to Lewiston? A. Indianapolis, Indiana.

Q. Where have you resided since 1903, in what city? A. Lewiston, Idaho. [1395—1065]

Q. Have you had some occupation here, Miss Kettenbach?

A. Yes; I was Librarian of the Lewiston State Normal School, and have been for six years.

Q. You have that position now, have you?

A. Yes, I have the position now.

Q. Did you have that position in 1904?

A. Yes; I think I took the position in January, 1904. I will have to stop to think. It is six years this last January. That would make it right, wouldn't it? 1904—yes; I was elected in January, 1904.

Q. Had your mother died prior to your coming to

(Testimony of Miss Elizabeth Kettenbach.)

Lewiston, Miss Kettenbach? A. Yes, she had.

Q. Did you inherit some property or estate from your mother? A. Yes, I did.

Q. What was the character of the property belonging to that estate?

A. Why, it was real estate at the time of her death; it was sold and converted into cash.

Q. And was it the proceeds of the sale of this real property which you had at the time that you came to Idaho? A. Yes.

Q. Through what institution was that money invested for you, Miss Kettenbach?

A. The Idaho Trust.

Q. Did you have this money or a part of it invested through the Idaho Trust Company during the year 1904? A. I did.

Q. Do you remember any of the people to whom the money was loaned at that time?

A. Yes; I remember that the McGranes had some, and I think Billups was one, and I think there was another small note, but I don't [1396—1066] just remember who had that.

Q. Did you have any money loaned to C. A. House?

A. Yes; I think that is the one that I couldn't remember.

Q. Approximately what was the aggregate amount that you had invested in loans at that time?

A. Why, I think it was between \$4,000.00 and \$4,500.00, I am not just sure of the amount, possibly \$4,300.00. I think that was about the right amount

(Testimony of Miss Elizabeth Kettenbach.)
at that time.

Q. Do you remember whether any of these loans were past due in July, 1904?

A. Why, I think it was either one of the loans or the interest on one of the loans that I was expecting at the time that I proved up, and it wasn't paid until later.

Q. In July, 1904, how long had you been in possession of your part of the proceeds of your mother's estate?

A. Why, about—oh, I think possibly two or three years. I am not quite sure of that. I stayed back east a while after my mother's death. I don't remember exactly, but not so very long—possibly two or three years.

Q. What is the amount of your salary, Miss Kettenbach? A. \$60.00 a month.

Q. Do you remember whether it was more or less than that in 1904?

A. I think it was only \$50.00 to begin with, I think it was, but I am not just sure; it was raised to \$60.00 later on, but I am not positive whether it was in 1904 or 1905. I can tell, though; I can refer to my bank statements. You can tell there what the salary warrants that I deposited were.

Q. At the time when you went to visit the land upon which you subsequently filed, did you pay your own expenses in connection with that business?

A. Do you mean pay for them? [1397—1067]

Q. When you went up to inspect the land?

A. Yes; I settled with Mr. Kester after we came

(Testimony of Miss Elizabeth Kettenbach.)

back. He divided up the expenses, and I paid him personally.

Q. Will you examine the paper which I hand you and state whether that is a receipt—

A. Yes.

Q. —for your part of the expenses?

A. Yes, this is the receipt. I looked over it carefully, and this is the only receipt I had for the expenses, and that is correct.

Q. Did you pay the amount for which this receipt was given?

A. Yes; I paid him in cash. I remember of drawing out the money at the Idaho Trust and taking it over to Mr. Kester and paying him.

Mr. COX.—Will you mark this for identification, please?

Said receipt was thereupon marked by the Reporter as “Defendants’ Exhibit ‘K,’ for identification.”

Q. Do you remember what time you went to inspect this land, Miss Kettenbach?

A. Yes; it was in October, I think about the 6th of October that we left here, and we were gone just one week.

Q. In what year? A. In October.

Q. Was it the October before you filed?

A. Yes; it was in 1903, I think.

Mr. GORDON.—May I inquire: Are you going to offer that receipt?

Mr. COX.—Yes, sir.

WITNESS.—Yes, I think it was October, 1903;

(Testimony of Miss Elizabeth Kettenbach.)

it must have been, because it was the fall before we filed.

Mr. COX.—Q. You paid your location fee, your filing expenses, and the amount required upon final proof, did you, Miss Kettenbach? [1398—1068]

A. Yes, I paid the filing expenses myself; that is not included in this money—that \$500.00—I paid the filing expenses at the time I filed; and then the final proof, why that was the money that I borrowed from Will.

Q. Who has paid the taxes on this land?

A. Why, I did once or twice, but after that it was paid from either the Idaho Trust or the Lewiston National Bank, and after the consolidation my brother looked after that for me.

Q. With whose money have the taxes been paid, Miss Kettenbach?

A. With my own money. It was always charged up to me in my account.

Q. Well, just what do you mean by saying it was paid from the Idaho Trust Company or the Lewiston National Bank?

A. Well, I had my money on deposit there, of course, and the money that I had was on deposit there, and it was paid—I would draw a check, you know, and it was always paid, and then charged up to me.

Q. Who looks after your taxes for you, Miss Kettenbach?

A. Why, through the bank, or who has charge of it there. My brother, I guess (Frank). looks after

(Testimony of Miss Elizabeth Kettenbach.)

it, in a way, but I don't know exactly who goes up and pays the taxes. I always get my receipts; they are usually included in my statements when they are returned—the bank statements.

Q. Your taxes are paid for you by the bank, as I understand it? A. Yes.

Q. And a memorandum check is drawn against your funds? A. Yes.

Q. For the payment of the taxes?

A. Yes. I imagine that is the way it is done, because I always have my receipts and have always taken care of them myself. First I paid them myself—I would go to the courthouse and pay them—but the last two or three times why it has been done for me. [1399—1069]

Q. Have all the taxes assessed on the land since it became assessable been paid? A. Yes. Yes.

Q. Have all of those taxes been paid with your money? A. Yes, sir.

Q. Prior to the time when you made final proof, Miss Kettenbach, did you have any agreement or understanding, direct or indirect, with William F. Kettenbach, or George H. Kester, or William Dwyer, or all of them or any of them, or with anyone else whatsoever, for the sale of this land, or any interest in it? A. No, sir, I never did.

Q. Have you ever had any agreement or understanding with any of them for a sale of the property? A. No, sir.

Q. Or any interest in it? A. No, sir.

Q. Are you now the owner of this land, and of

(Testimony of Miss Elizabeth Kettenbach.)

every part thereof, and of every interest therein?

A. I am.

Q. I will ask you to examine this document, being a letter upon stationery of the Department of the Interior, signed "Fred. Dennett, Commissioner," and state whether that is a letter which was received by you.

A. Yes, this is one that I received.

Mr. COX.—I will ask to have that marked for identification.

Said letter was thereupon marked by the Reporter as "Defendants' Exhibit 'L,' for identification."

Q. Do you know where your tax receipt for the year 1909 is?

A. Why, it may be that I still have that up in my—among my papers.

Q. You have paid the taxes on this land for that year? [1400—1070]

A. Yes, it is paid, but I must have mislaid it, or at least I could not find it when I was looking for these.

Q. The taxes for the year 1910 are not yet being received by the proper collecting officers, are they?

A. No, I think not. I think they pay the taxes usually in December.

Q. I will ask you to examine these four tax receipts, for the years 1905, 1906, 1907 and 1908, both inclusive, and state if those are your receipts for taxes upon the land in question?

A. Yes, those are the ones.

(Testimony of Miss Elizabeth Kettenbach.)

Mr. COX.—We will ask to have these marked for identification.

Said receipts were thereupon pinned together, and marked by the Reporter as “Defendants’ Exhibit ‘M,’ for identification. (4 receipts.)”

Q. I will ask you to examine the three memorandum checks of the Idaho Trust Company which I now hand you, dated respectively December 20, 1906, December 14, 1907, December 26, 1908, and state if those are the checks drawn against your moneys upon deposit in the Idaho Trust Company for the payment of the taxes for the years for which the check is dated?

A. Yes, those are the checks; and prior to that time I paid the taxes myself. I think that will show, as I stated before, that first I paid them myself, and then later on they were paid for me, and those are the memorandum checks.

Mr. COX.—We will ask to have these marked for identification.

Said checks were thereupon pinned together, and were marked by the Reporter as “Defendants’ Exhibit ‘N,’ for identification.”

Q. Do you still have a checking account with the Idaho Trust Company?

A. No, not at present. I am keeping my account at the Lewiston National Bank.

Q. How long has your checking account been with the Lewiston National Bank? [1401—1071]

A. Since the consolidation of the Idaho Trust and the Lewiston National Bank. I don’t remember ex-

(Testimony of Miss Elizabeth Kettenbach.)

actly when that was. My account was transferred, and it is still there. I don't remember just exactly when it was.

Mr. COX.—Does the record show the date of the consolidation of the Idaho Trust Company with the Lewiston National Bank?

Mr. GORDON.—No; but you may show that, if you will.

Mr. BABB.—The consolidation might not indicate the date when any particular account was changed.

WITNESS.—No—that was what I was going to state, and I can't state precisely the date when the consolidation was.

Mr. BABB.—It was about July 1st, 1907, I think.

WITNESS.—But it was after the consolidation that my account was transferred.

Mr. BABB.—About July 1st, 1907, I think it was.

Mr. COX.—Q. As nearly as you can now state, Miss Kettenbach, your checking account was transferred from the Idaho Trust Company to the Lewiston National Bank some time after July, 1907?

A. Yes.

Q. Please examine the statements of the Idaho Trust Company in account with Miss Lizzie Kettenbach, dated respectively July 1st, 1904, August 2, 1904, November 3, 1904, and December 6, 1904, and state whether those are correct statements of your account with the Idaho Trust Company and the dates upon which they were delivered, if you know?

A. Yes, those are correct.

(Testimony of Miss Elizabeth Kettenbach.)

Mr. COX.—We will ask that these be marked for identification.

Said accounts were thereupon pinned together, and marked by the Reporter as “Defendants’ Exhibit ‘O,’ for identification.”

WITNESS.—I was going to say, in looking over those statements, that the money I could have paid my nephew a little before the time that I did, but I remember of him being away for quite a while, and [1402—1072] that was one reason it run on a little longer. He was gone for quite a while at that time out of the city.

Mr. BABB.—I would like to explain that there was no technical consolidation of the Lewiston National Bank and the Idaho Trust Company. The Idaho Trust Company acquired a majority of the stock of the Lewiston National Bank, and it ceased as fast as it could conveniently to receive any deposits other than savings deposits, and transferred deposits other than savings deposits to the Lewiston National Bank.

WITNESS.—Yes. Well, it was a term so generally used that I used it.

Mr. COX.—Q. Prior to July 1st, 1904, and until some time subsequent to July, 1907, did you continuously maintain an account with the Idaho Trust Company? A. I did.

Q. In your statement from the Idaho Trust Company, dated July 1st, 1904, there is an item, “Salary Warrant, \$50.00.” A. Yes.

Q. What is that, Miss Kettenbach?

(Testimony of Miss Elizabeth Kettenbach.)

A. That is the last of the—that is the June warrant, received for the month of June at the Normal School, and I deposited it on that date.

Q. That was your salary as Librarian?

A. Yes.

Q. In these statements reference is made to “Balance J. W. Billups interest coupon,” “C. A. House loan and interest,” “Interest on note of Edna McGrane,” are those items payments of interest and payments upon loans of your money?

A. Yes, sir.

Mr. COX.—We now offer in evidence the several documents identified by this witness, and marked by the Stenographer, from and including Exhibit “K” for identification, to and including Exhibit “O,” for identification, [1403—1073] in order to avoid recalling this witness. There is one thing that just occurred to me there: I don’t want to waive any question of the sufficiency of the evidence.

Mr. GORDON.—What do you mean by “sufficiency of the evidence?”

Mr. COX.—By offering them in evidence ourselves at this time.

Mr. GORDON.—I don’t understand exactly what you mean.

Mr. COX.—Well, I mean this: that if as to this particular entry, and this particular witness, or this particular defendant, your evidence is not sufficient to require us to proceed to proof—I don’t want to waive the right to raise that.

Mr. GORDON.—That wouldn’t make any differ-

(Testimony of Miss Elizabeth Kettenbach.)

ence in the trial of a case of this kind. It isn't like a jury case.

Mr. COX.—No, but it is a question that had not occurred to me before, as to whether we would waive it by offering it in this shape. We might agree that for the purpose of avoiding the recalling of this witness, that these should be considered as being offered in evidence, without, however, waiving any right to question in any form the sufficiency of the complainant's proof.

The SPECIAL EXAMINER.—Yes, I should think that would be sufficient.

Mr. GORDON.—You have offered these by the number of the exhibit, have you?

Mr. COX.—Yes.

Redirect Examination.

(By Mr. GORDON.)

Q. Miss Kettenbach, do you remember how much your share of your mother's estate was?

A. Why, I think that it was—the amount that I have stated before that I drew out or was sent out here—about \$4,500.00, I think.

Q. And to whom did you send that?

A. Well, I sent part of it out before I came to my brother Frank to invest or loan. After I came out I think I brought the rest with [1404—1074] me when I came out here. I think I sent him \$1,000.00, and then later on brought the other money that is loaned out here.

Q. Has your brother always made your investments for you?

(Testimony of Miss Elizabeth Kettenbach.)

A. Yes, he has always made the loans for me.

Q. He would make the loan, and then tell you he had made it, and charge it to your account?

A. Oh, yes, and the interest was, of course, always—

Q. You didn't bother yourself about it at all?

A. Not at all, no; I never bothered because I left it—

Q. Now, have you any other money invested now, or have you spent it?

A. Oh, no; I have it loaned out.

Q. It is in loans now? A. Yes, in loans.

Q. Do you know to whom the loans are made?

A. Yes, I know to whom.

Q. To whom?

A. Well, there is one to the—I think it is a company called the Peck Flume Company has a loan; and there is another one—Denny a man by the name of Denny has a loan.

Q. Now, this Peck Flume Company, is it an organized company? A. Oh, yes.

Q. Do you know who the president of that company is?

A. No, I don't know who the president is.

Q. Is Mr. Frank Kettenbach interested in that company?

A. He is interested in it, but I don't know that he is president. I never made any inquiries.

Q. He loaned that money for you to the company?

A. Yes, he loaned that money for me.

Q. These memorandum checks which you have

(Testimony of Miss Elizabeth Kettenbach.)

identified here, marked Defendants' Exhibit "N," you did not sign these checks yourself? [1405—1075]

A. No. They were paid from the Idaho Trust Company.

Q. And that is the way that the taxes were paid?

A. Yes, sir. That is, after the first two years. I think I paid them myself, and then I left it to the Idaho Trust Company to pay them whenever they came due. It saves me the trouble of doing it.

Q. They were paid and just charged up to your account? A. Yes, they were charged to my account.

Q. Instead of you giving a check? A. Yes.

Q. And these memorandum checks were put in by whoever docketed it?

A. Yes. I think Mr. Smith probably paid some of them.

Q. This one of December 14, 1907, I will ask you whether or not that is not made out and signed by Mr. Frank Kettenbach?

A. No, I think not. I don't think that is Frank Kettenbach's writing. It looks some like his writing, but I think that is Mr. Smith's; I couldn't say positively, but it isn't Frank's.

Q. The one of December 20, 1906, you think is Frank's?

A. Well, I think that is, but I wouldn't say positively. It looks more like his handwriting; but I know the other isn't.

Q. Miss Kettenbach, did you have any arrangement with any of your relatives that you would all

(Testimony of Miss Elizabeth Kettenbach.)

hold your claims in a bunch and sell them together?

A. No, sir, I never had any arrangement at all.

Q. These exhibits that have been identified here and offered as Exhibit "O," being your account with the Idaho Trust Company, when did you receive these papers?

A. Why, usually every month they sent them out.

Q. Did you receive these— A. Yes, sir.

Q. — in 1904?

A. Yes, sir; those were the papers that I received every month, [1406—1076] the statements from the bank.

Q. They are not statements that you have just gotten recently?

A. Oh, no. No, I have had all of them for all these years; I have kept them. They issued them monthly.

Q. And these tax receipts that are marked Defendants' Exhibit "M," were they sent to you?

A. Yes, sir.

Q. Just after the payments were made?

A. After the payments were made they were always returned to me. I took care of them myself.

Q. And you have had them in your possession ever since? A. Yes, always.

Q. Until you delivered them to your attorney?

A. To Mr. Cox, yes, sir.

Q. Have you a copy of the letter to which the letter from the Commissioner of the land office, which has been offered as Defendants' Exhibit "L," is an answer?

A. Did you say have I an answer to this letter?

(Testimony of Miss Elizabeth Kettenbach.)

Q. No; I say have you a copy of the letter to which this is an answer? A. A copy, you say?

Q. Yes? A. No. No, I haven't.

Q. Do you remember of ever seeing that letter?

A. No, I don't remember of seeing it.

Recross-examination.

(By Mr. COX.)

Q. The Mr. Smith to whom you referred as having filled in some memorandum checks offered in evidence, is Edward C. Smith, Secretary of the Idaho Trust Company? A. Yes, sir.

Mr. GORDON.—[1407—1077] Q. You are not sure whether they were filled out by Mr. Smith or not, are you?

A. No, I am not sure of that, but I just supposed so, because it looked a little bit like his handwriting. I have seen it, and that is why I said that. [1408—1078]

[Testimony of Mrs. Martha E. Hallett, for Complainant.]

Mrs. MARTHA E. HALLETT, a witness called in behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. You are Mrs. Martha E. Hallett? A. I am.

Q. And where did you reside in 1904, Mrs. Hallett?

A. In Lewiston, Idaho.

Q. What part of Lewiston?

A. Well, I may not know my directions,—

(Testimony of Mrs. Martha E. Hallett.)

Q. Well, I mean were you living on the hill in Lewiston? A. No.

Q. And were you living with anyone at that time?

A. I was keeping house for myself.

Q. And did you know Mr. George H. Kester?

A. Yes.

Q. Was he living with you at that time?

A. He boarded with me, and I think at that time he and his wife were boarding with me.

Q. Well, did you live with him prior to that time?

A. I never lived with him. I think at one time I boarded and had my rooms in Mr. Kester's home, but at this time I had the house rented and they were boarding with me, he and his wife. I think that was the year—there was different times.

Q. Were there any other persons boarding with you except Mr. Kester and his wife?

A. I think not. At one time Mr. Albert Osborn boarded with me, but I think at that time he didn't.

Q. But I mean you were not running a boarding-house?

A. Oh, no; just taking two or three that I could do for myself.

Q. And you just had as many boarders as you could conveniently—[1409—1079]

A. As a rule only Mr. Kester and his wife, and Mr. Osborn when his mother wasn't here.

Q. I understand you had as many boarders as you could conveniently do the work for yourself; is that correct? A. Yes, that's true.

Q. Did you own the property which you—

(Testimony of Mrs. Martha E. Hallett.)

A. I did not.

Q. Did you own any property in Lewiston?

A. No, sir, not at that time.

Q. Anywhere else? A. I don't think so.

Q. And do you remember who first spoke with you about taking up a timber claim?

Mr. TANNAHILL.—The defendants severally object to any evidence of the witness relative to her taking up a timber claim, in so far as it relates to bills No. 388 and 407, upon the ground and for the reason that the entry of the witness is not involved in these two particular actions, and the evidence is irrelevant and immaterial.

WITNESS.—Why, I think it was myself. No one spoke to me about taking up a timber claim, for no one ever broached it to me, but I myself broached it to different ones.

Mr. GORDON.—Q. Did you ever talk to Mr. Kester about it?

A. I never did; that is, to any amount. I think I told them when they were going to the timber that I would like to go with them, but I hadn't spoken to him before.

Q. You hadn't spoken to him before?

A. No, not to him.

Q. Did you ever talk to Mr. Kettenbach about it?

A. I never did.

Q. Now, who made the arrangements for you to go to the timber? [1410—1080]

A. Well, there was no—I will have to think how I will answer that. Did you want to know who I first

(Testimony of Mrs. Martha E. Hallett.)

spoke to about going to the timber?

Q. Yes; I want to know all about it.

A. Well, I spoke to a gentleman first who roomed with me and told him I had the fever and wanted a claim.

Q. You had what?

A. I said I wanted a timber claim and I spoke with a gentleman who roomed with me first, and asked him if he thought I could take a claim, and he said "I think you can, Mrs. Hallett," but he and I never spoke any more about it at that time; and then afterwards when I knew everybody was taking claims I remember I asked all my friends if they knew any way that I could take up a timber claim, and so I knew they intended going, and I asked if I could go with them, and they of course at first thought it would be a hard trip for me, but I told them I could stand it, and I thought I wanted a timber claim, and—

Q. And you went with the party, did you?

A. I went with the party, yes, sir.

Q. With whom did you go?

A. I went with Mr. and Mrs. Kester, and Mr. and Mrs. White, and Elizabeth Kettenbach, and myself.

Q. And did Mr. Kester conduct that party?

A. Well, I don't know.

Q. Now, who bought the railroad tickets for the party?

A. Well, I couldn't say. I think I paid my fare, but the rigs I think they arranged for, of course, the gentlemen of the party did, and Mr. White; I

(Testimony of Mrs. Martha E. Hallett.)

couldn't say who did it.

Q. And do you remember whether Mr. White and Mr. Kester bought all the tickets for the party?

A. I couldn't say. You know I only know my own part of it.

Q. Well, do you know how much your part of it was that you paid?

A. I couldn't tell you now, I don't think, what my expenses were. [1411—1081]

Q. Did you pay any of it?

A. Why, certainly I paid all my own expenses, Mr. Gordon?

Q. And you don't remember exactly what the expenses were?

A. Well, I couldn't say exactly; my hotel, and railroad fare.

Q. And how long were you gone from Lewiston?

A. Well, I couldn't tell you exactly. I think we went to Orofino by rail, and if I remember correctly we went from there in a rig to Pierce.

Q. It took you four or five days away from Lewiston?

A. I think perhaps something like that. I don't remember just how many days, Mr. Gordon.

Q. And do you remember who located you?

A. Mr. Dwyer located me.

Q. And do you know how much the expense of taking up the whole timber claim was?

A. I don't think I could tell you. I know what I paid my locator.

Q. Now, how much did you pay your locator?

(Testimony of Mrs. Martha E. Hallett.)

A. I paid him \$100.00 for locating me.

Q. And when did you pay that?

A. Well, I paid it shortly before I proved up, I think.

Q. The same day?

A. I couldn't tell you, but it was between my—

Q. Filing?

A. — filing and my final proof, because I had to pay him before I could prove up.

Q. Wasn't it the same day you made proof?

A. I couldn't say. I don't remember.

Q. Do you remember how much it was?

A. Yes; it was \$100.00.

Q. How long before you located on the claim did you go over the land? [1412—1082]

(No answer.)

Q. How long before you filed on the land did you view the land?

A. It was in the fall; I think it was in October.

Q. Do you know why you didn't file immediately after you returned?

A. I am not sure of this, but it seems to me that it was not ready for filing until towards spring.

Q. Do you remember who prepared your filing papers for you?

A. Let's see—my filing papers? Those when I went to file?

Q. Yes. A. My attorney, I think.

Q. Who was your attorney?

A. Well, I. N. Smith at that time I think was my attorney.

(Testimony of Mrs. Martha E. Hallett.)

Q. And had he been your attorney in other matters?

A. In different things, yes, he had been employed by me.

Q. Do you know whether you paid him any fee for preparing your filing papers?

A. I certainly did.

Q. About how much?

A. I don't think I paid him that day, you know. He did other things for me, and I am not sure that I paid him anything on that day.

Q. Do you remember how long you were at the land office before you filed? Did you get to the land office the day that you made your filing?

A. I don't think I understand you.

Q. I say, do you remember what time of the day it was you got to the land office that you made your filing? A. I don't.

Q. Was it in the morning or in the afternoon?

A. I don't think I could tell you whether I went there in the forenoon or afternoon. [1413—1083]

Q. Do you remember whether there was a crowd there on that occasion.

A. I know there was several people; I don't know how many.

Q. Well, you didn't go there until the day you filed, did you? A. Yes.

Q. How?

A. I certainly must have. Do you want me to tell you what I think? This is what I think, you know.

(Testimony of Mrs. Martha E. Hallett.)

Q. Well,—

A. I think after we knew that it was to be open I think I went up every day for some time.

Q. You went up every day for some time?

A. Yes. I was just trying to think about this filing, what it was, you know.

Q. Did you stand in line there several days before you filed? A. Yes, sir, I did.

Q. All night, too? A. No.

Q. Now, who held your place in line at night?

A. My son and his wife was with me, and they was taking turns.

Q. And when you went there to file, was your son and daughter in law in line to take your place?

A. I couldn't tell you about that.

Q. Did any of them stand in line?

A. Well, I couldn't tell you that. I know some of them were there during the day, and as I tell you, my son or his wife took their turns during the day, but at night I couldn't tell you.

Q. And do you remember how much you paid in the land office when you made your filing?

A. I don't know as I know exactly, but it seems to me that it was something like \$7.00 or \$8.00. I am not sure, Mr. Gordon. [1414—1084]

Q. Did you have any bank account at that time?

A. I had money in the Lewiston National Bank.

Q. You had what?

A. Money in the Lewiston National Bank.

Q. Was it on deposit?

A. I am not positive whether I had a checking

(Testimony of Mrs. Martha E. Hallett.)

account, but I had my own money there.

Q. Well, now, but did you have a checking account? A. I am not sure.

Q. Now, how was your money at the bank?

A. I couldn't tell you positively. There were times when I had a checking account; sometimes I had more money and sometimes I had less, and sometimes I had a checking account and sometimes I had a deposit, and I don't remember how my account was at that time.

Q. Well, did you have a checking account at the bank at the time you made your filing?

A. I couldn't say now.

Q. Did you have one at the time you made your final proof?

A. I couldn't say now. I know I had the money in the bank, but I couldn't tell you, Mr. Gordon.

Q. Well, do you remember how you got it out of the bank at the time you made your final proof?

A. Why, I went to the bank and got the money. I think I got it from Mr. Kester, who was cashier; but whether I made out a check or whether it was in the form of a deposit I couldn't tell you, Mr. Gordon.

Q. You know you got it from Mr. Kester that morning? A. Well, I suppose—I think I did.

Q. Well, don't you remember?

A. Yes, I think it was he that waited on me, because he was usually at the cashier's window.

